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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Reserved on: May 01, 2024****Decided on: May 27, 2024**+ **W.P.(C) 13556/2019****REVATI CEMENTS PVT LTD & ANOTHER****..... Petitioners****Through: Mr. Vijay Agarwal,  
Mr. Hardik Sharma,  
Mr. Pankush Goyal,  
Mr. Kshitiz Garg,  
Ms. Barkha, Mr. Nagesh  
Behl, Advocates****V****UNION OF INDIA & ORS****..... Respondents****Through: Mr. Kirtiman Singh, CGSC  
with Mr. Waize Ali Noor and  
Mr. Varun Pratap Singh,  
Advocates for R-1/UOI.  
Mr. P. V. Yogeswaram,  
Advocate for R-3****CORAM****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****ORDER****CM APPL. 6943/2022**

1. The petitioners filed the present writ petition to quash and set aside the Provisional Attachment Order No. 02/2019 (INSZO) dated 23.09.2019 issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”) issued by



the respondent no. 3 along with consequential proceedings; to quash the Original Complaint No. 1208/2019 dated 14.10.2019 filed by the respondent no 3 in terms of section 5(5) of PMLA pending before the Adjudicating Authority pursuant to the impugned Provisional Attachment Order and to quash Notice to Show Cause dated 22.10.2019 issued by the Adjudicating Authority to the petitioner under section 8 of PMLA pursuant to filing of the Original Complaint.

**1.1** The applicant/ petitioner no 1/M/s Revati Cements Pvt. Ltd. in application under disposal stated that the impugned proceedings against the applicant/petitioner no 1 are a gross misuse and blatant abuse of the provisions of the PMLA and allegations made against the applicant/petitioner no 1 are false and unsubstantiated and therefore, the impugned proceedings are liable to be quashed. The respondent no 3 vide Provisional Attachment Order No. 02/2019 (INSZO) dated 23.09.2019 provisionally attached an immovable property i.e. land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnagar, District Satna (M.P.) having a total value of Rs. 4,68,60,710/- owned by the applicant/petitioner no 1 and



believed to have been acquired out of the proceeds of crime. The respondent no 3 filed the impugned Original Complaint OC 1208 of 2019 dated 14.10.2019 before the Adjudicating Authority in terms of Section 5(5) of the PMLA and thereafter the impugned notice to show cause dated 22.10.2019 was issued by the Adjudicating Authority to the applicant/petitioner no 1 under Section 8(1) of the PMLA. The Adjudicating Authority passed an order of confirmation dated 02.03.2020 confirming the impugned POA in terms of Section 8(3) of the PMLA. The applicant/petitioners filed an Appeal bearing no. 3789/2020 dated 02.11.2020 under section 26(1) of the PMLA against the said order of confirmation before the Appellate Tribunal, New Delhi which is still pending before the Appellate Tribunal. The respondent no 3 vide separate Provisional Attachment Order dated 28.03.2019 under section 5(1) of the PMLA provisionally attached other immovable properties of the petitioner having a value of Rs.28,96,58,795/- and said Provisional Attachment Order is subject matter of another Writ Petition bearing WP(C) No 7026 of 2019.

**1.2** The petitioner no 1 was incorporated with the object of establishing an integrated cement plant at Village Saha, Tehsil



Raghuraj Nagar, District Satna, MP and was setting up a 3.0 MTPA cement plant with captive thermal power plant of 45MW for addressing its power requirements and said cement plant was a green field mega project. The petitioner no 1 has taken numerous steps for obtaining various permissions and leases from different governmental departments. The petitioner no 1 also took concrete steps to acquire loans, equipment and land. The Ministry of Coal, Government of India vide advertisement dated 06/13.11.2006 invited applications for the allocation of coal blocks including Thesgora-B/Rudrapuri Coal Block in the State of Madhya Pradesh. The 36th Screening Committee concluded its deliberations on 03.07.2008 and recommended allocation of Thesgora-B/Rudrapuri coal block jointly to the petitioner no 1 and M/s Kamal Sponge Steel & Power Ltd and thereafter a Joint Venture Agreement dated 03.09.2008 was executed. The Ministry of Coal vide letter dated 21.11.2008 allocated Thesgora-B/Rudrapuri Coal Block in the State of M.P. for captive mining of coal jointly to M/s Kamal Sponge Steel & Power Ltd and the petitioner no 1. Thesgora Coal Pvt. Ltd. was incorporated as a Joint Venture Special Purpose Vehicle by Agreement dated



02.01.2009, executed between M/s KSSPL and the petitioner no 1 for the purpose of exploring, prospecting, developing, exploiting/extracting coal block/deposits as per the terms and conditions of the joint allocation by the Ministry of Coal. Ministry of Coal vide letter dated 17.02.2014 de-allocated the Thesgora-B/Rudrapuri coal block.

**1.3** CBI initiated a Preliminary Enquiry No. 219 2012 E 0002 dated 01.06.2012 on the reference of Central Vigilance Commission (CVC) vide Letter dated 012/COL/020/1716 dated 13.04.2012 against the officials of the Ministry of Coal for alleged corruption in allocation of coal blocks to private companies during the period 2006-09. FIR No RC No. 219 2014 (E) 0014 dated 30.07.2014 under sections 120B read with section 13(2) read with 13(1)d) of the Prevention of Corruption Act, 1988 was registered against various accused including the petitioner no 1 at C.B.I/EO-I, New Delhi. The respondent no 2/ED on 30.12.2014 registered ECIR No. 03/INSZO/2014 under Section 3/4 of PMLA construing the offences under Sections 420/120-B IPC as Scheduled Offences. The Charge Sheet was filed on 10.08.2017 against 6 accused persons including



the petitioner no 1 under sections 420 & 120-B IPC and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act,1988 in the Court of Special Judge at New Delhi. The respondent no 3 subsequently initiated attachment proceedings as detailed hereinabove.

**1.4** The applicant/petitioner no 1 due to Provisional Attachment Order is suffering heavy losses which led to an inability to pay its bank debts incurring of financial losses by its shareholders and loss of reputation to the company. The petitioner no 1 is desirous of re-starting the work of the cement plant with the help of independent interested investors. However, the applicant/petitioner no 1 is facing difficulties due to the attachment of immovable property situated in Satna. No loss would be caused by reason of the Attached Immovable Property being substituted with a bank guarantee of the appropriate amount as prayed for by the applicant/petitioner no 1. The applicant/petitioner no 1 is ready to submit a bank guarantee for attachment in place of the attached immovable property. The applicant/ petitioner no 1 prayed that the attached immovable property i.e. land admeasuring 26.76 hectares situated at Village



Saha, Tehsil Raghurajnar, District Satna (M.P.) having a total value of Rs.4,68,60,710/- owned by the applicant/petitioner no 1 be released and be substituted with a bank guarantee in the sum of Rs.4,68,60,710/-.

2. The respondent no 3 filed reply wherein preliminary objection stated that the present application is not maintainable on the ground of *forum non convenience* as the petitioner no 1, attached property and the respondent no 3 are based in the State of Madhya Pradesh, and referred decision dated 02.03.2022 passed by this court in **M/s Faith Cricket Club V Directorate Of Enforcement, W.P.(C) 3603/2022, CM APPL 10600/2022 & 10601/2022**. The provisional attachment order is also passed in Indore. CBI registered a case vide FIR No RC-219/2014/E0014 dated 30.07.2014 for commission of offences under section 120B read with section 420 IPC and section 13(2) read with section 13(1) of Prevention of Corruption Act, 1988 against various accused including the petitioner no 1. The charge sheet bearing no 13/2017 dated 10.08.2017 has already been filed under sections 120 B and 420 IPC and under sections 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 against



various accused including the petitioner no 1. The offences committed by the petitioner no 1 are scheduled offences under PMLA and accordingly ECIR dated 30.12.2014 was recorded by the respondent no 2 for investigating the commission of offence of money laundering and to unearth proceeds of crime. The investigation was conducted as per provisions laid down under PMLA and total proceeds of crime of Rs.49.2 crores have been quantified during the investigation. Accordingly, the properties worth of Rs.49.2 crores equivalent to the proceeds of crime have been attached vide two provisional attachment orders.

**2.1** The Provisional Attachment Order No. 01/2019 dated 28.03.2019 pertains to assets worth Rs.28,96,58,795/- derived out of the proceeds of crime which have been attached. The land admeasuring 339.94 acres situated at District Satna having registered sale value of Rs.13,34,58,985/- and construction work thereon worth Rs.15,61,99,810/- directly linked with the proceeds of crime have been attached under section 5 PMLA vide Provisional Attachment Order dated 28.03.2019. The Original Complaint bearing No.1132/2019 as per section 5(5) PMLA was filed on 26.04.2019





before Adjudicating Authority for adjudication. The Adjudicating Authority issued a notice to show cause to the petitioner no 1 and others as per section 8(1) PMLA. The petitioner no 1 filed a Writ Petition bearing no W.P.(C) 7026/2019 along with stay application before this Hon'ble Court wherein vide order dated 09.07.2019 proceedings before Adjudicating Authority were ordered to be stayed.

**2.2** The Provisional Attachment Order No.02/2019 dated 23.09.2019 pertains to attachment of assets worth Rs.20,22,58,505/- and vide said provisional attachment order, Rs.19,52,845/- in the bank account No.058111023776 of M/s TCPL with Dena Bank and land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnagar, District Satna worth Rs.4,68,60,710/- acquired out of proceeds of crime and directly linked with the proceeds of crime and personal properties of Mr. Umesh Shakra, Director & beneficial owner of the petitioner no 1 to the extent of Rs.15,34,44,950/- as equivalent to the proceeds of crime were attached as provided under section 2(1)(u) of the Act. The Original Complaint bearing No.1208/2019 as per section 5(5) PMLA was filed on 14.10.2019



before Adjudicating Authority for adjudication. The Adjudicating Authority issued a notice to show cause to the petitioner no 1 and other as per section 8(1) PMLA. The Adjudicating Authority vide orders dated 02.03.2020 and 23.11.2020 has confirmed the provisional attachment order and attachment of the properties attached under section 5(1). The properties in question are already under attachment/restrain due to issuance of provisional attachment order issued by the respondent no 3 which has been confirmed by the Adjudicating Authority under PMLA. It was prayed that the application is liable to be dismissed.

**3.** The petitioners filed the rejoinder.

**4.** Section 5 PMLA deals with attachment of property involved in money laundering. Section 5(1) provides that where the Director or any other officer not below the rank of Deputy Director authorized by the Director has reason to believe to be recorded in writing on the basis of 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 any proceedings relating to confiscation of such



proceeds of crime may by order in writing provisionally attach such property for a period not exceeding as provided under the Act from the date of the order. Section 5(2) further provides that the Director or any other officer not below the rank of Deputy Director shall immediately after attachment forward a copy of the order along with the material in his possession to the Adjudicating Authority. Section 5(5) further provides that the Director or any other officer who provisionally attaches any property under sub-section (1) shall within a period of thirty days from such attachment file a complaint stating the facts of such attachment before the Adjudicating Authority. Section 8 deals with Adjudication. Section 8(1) provides that the Adjudicating Authority on receipt of a complaint under section 5(5) and 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 section 5(1). Section (3) provides that where the Adjudicating Authority decides that any property is



involved in money-laundering then Adjudicating Authority shall by an order in writing confirm the attachment of the property under section 5 (1). Section 25 of PMLA deals with Appellate Tribunal. Section 26(1) provides that the Director or any person aggrieved by an order made by the Adjudicating Authority may prefer an appeal to the Appellate Tribunal. Section 35 deals with power and procedure of Appellate Tribunal.

5. It is reflecting that the petitioner no 1 in pursuance of advertisement dated 06/13.11.2006 published by the Ministry of Coal, Government of India vide letter dated 21.11.2008 was allotted Thesgora-B/Rudrapuri coal block jointly with M/s Kamal Sponge Steel & Power Ltd as per Joint Venture Agreement dated 03.09.2008. The Ministry of Coal vide letter dated 17.02.2014 de-allocated the Thesgora-B/Rudrapuri coal block. CBI in pursuance of reference of Central Vigilance Commission initiated a Preliminary Enquiry No. 219 2012 E 0002 dated 01.06.2012 and registered FIR bearing RC No. 219 2014 (E) 0014 dated 30.07.2014 under sections 120-B read with section 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 was registered against various accused including the



petitioner no 1. The respondent no 2/ED on 30.12.2014 also registered ECIR No. 03/INSZO/2014 under Section 3/4 of PMLA under Sections 420/120-B IPC and the Charge Sheet was filed on 10.08.2017 against 6 accused persons including the petitioner no1 under sections 420 & 120B IPC and section 13(2) read with section 13(1) (d) of the Prevention of Corruption Act, 1988. The investigation was conducted as per PMLA and total proceeds of crime worth Rs.49.2 crores was quantified during the investigation. The properties worth of Rs.49.2 crores were attached vide two provisional attachment orders. The Provisional Attachment Order No. 01/2019 dated 28.3.2019 attached land admeasuring 339.94 acres situated at District Satna having registered sale value of Rs.13,34,58,985/- and construction work thereon worth Rs.15,61,99,810/- which were stated to be directly linked with the proceeds of crime under section 5 PMLA. Thereafter Original Complaint bearing No.1132/2019 as per section 5(5) PMLA was filed on 26.04.2019 before Adjudicating Authority and The Adjudicating Authority issued a notice to show cause to the petitioner no 1 and others as per section 8(1) PMLA. The proceedings before



Adjudicating Authority were ordered to be stayed vide order dated 09.07.2019 passed in Writ Petition bearing no W.P.(C) 7026/2019 filed by the petitioner no 1. The Provisional Attachment Order No.02/2019 dated 23.09.2019 pertains to attachment of assets worth Rs.20,22,58,505/- and deals with Rs.19,52,845/- in the bank account No.058111023776 of M/s TCPL with Dena Bank and land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnagar, District Satna worth Rs.4,68,60,710/- which were acquired out of proceeds of crime and were directly linked with the proceeds of crime and personal property of Umesh Shakra, Director & beneficial owner of the petitioner no 1 to the extent of Rs.15,34,44,950/- as equivalent value of proceeds of crime. The Original Complaint bearing No.1208/2019 as per section 5(5) PMLA was filed on 14.10.2019 before Adjudicating Authority and the Adjudicating Authority issued a notice to show cause to the petitioner no 1 and others as per section 8(1) PMLA. The Adjudicating Authority vide orders dated 2.03.2020 and 23.11.2020 has confirmed the provisional attachment order and attachment of the properties attached under section 5(1). The land admeasuring 26.76 hectares



situated at Village Saha, Tehsil Raghurajnar, District Satna worth Rs.4,68,60,710/- which is subject matter of present application as per schedule of Provisional Attachment Order No.02/2019 dated 23.09.2019 was mentioned as directly linked with proceeds of crime. The relevant portion of the Provisional Attachment Order No.02/2019 dated 23.09.2019 is produced as under verbatim:-

**35. Therefore, on the basis of the material placed before me such as FIR and charge-sheet filed by CBI, statement recorded under section 50 of PMLA and other relevant documents procured during the course of investigation, I have reason to believe that M/s RCPL and its Directors in criminal conspiracy with the officers of Coal Ministry acquired the Thesgora-B/Rudrapuri Coal block by misrepresentation, fraud and cheating. Further, pursuance to the application for coal block and its allocation, M/s RCPL received share capital of Rs.49,19,17,300/- from various investors including its group companies. This share capital was accrued as a result of allocation of the coal block only and therefore it is nothing but proceeds of crime generated directly out of the criminal activity related to the schedule offence. The said proceeds of crime, as defined under section 2(l)(u) of PMLA, 2002 was placed, layered and finally integrated into purchase of immovable properties in the form of land parcels admeasuring 339.94 acres, construction work over the said land, invested as share capital in company M/s Thesgora Coal Private Limited and in Capital-Work-In-Progress, which are being projected as untainted. Accordingly, balance to the extent of Rs. 19,52,845/- in the bank account No.058111023776 of M/s TCPL with Dena Bank which is directly linked with the proceeds of crime, land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnar, Dist.Sntna**



**which was acquired at Rs.4,68,60,710/- out of proceeds of crime and personal properties of Mr.Umesh Shakra, Director & beneficial owner of M/s RCPL, to the extent of Rs. 15,34,44,950/- are considered for attachment as value of any such property, as provided under Section 2(1u) of the Act.**

6. Sh. Vijay Aggarwal, Advocate for the applicant/petitioners argued that Rule 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 empowers the Authorized Officer to substitute the attached property with a fixed deposit of the equivalent value. The petitioners have applied with the authorized officer for seeking release of the attached land but same was denied vide the communications dated 01.02.2021, 29.09.2021 and 08.11.2021. The applicant/petitioners do not have any other efficacious remedy and as such present writ Petition is maintainable. The Adjudicating Authority and the Appellate Tribunal do not have the power to release or substitute the attached property as per the provisions enumerated in the PMLA. Section 11 of PMLA vests the Adjudicating Authority with powers vested in a civil court under the Code of Civil Procedure, 1908. The counsel for the





applicant/petitioners to substantiate arguments referred order dated 16.09.2022 passed by the Supreme Court in **Properties & Investment Pvt. Ltd & another V. Union of India & others**, SLP No. 9335 of 2022 and decision delivered by the Division Bench of Telangana High Court in **T Gowrinadha Reddy V Deputy Director, Directorate of Enforcement**. The petitioner in present application is seeking substitution of land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnagar, District Satna (M.P.) having a total value of Rs. 4,68,60,710/-. The respondent no 2 vide impugned Provisional Attachment Order also attached immovable property admeasuring 18.928 hectares situated at village Sejwaya, Tehsil & District Dhar (M.P.) to the extent of Rs. 15,34,44,950/- and said property is having a total value of Rs. 20,96,00,000/-. The applicant/petitioner as an alternative arrangement is ready for attachment of the whole of immovable property admeasuring 18.928 hectares which will also take care of Rs. 4,68,60,710/- which is the value of attached property/land. It was stated that the respondent no 2/Enforcement Directorate has wide powers to attach a property which is defined as property and can



either be direct proceeds of crime or at equivalent value of the alleged proceeds of the crime and referred **Vijay Madanlal Choudhary V Union of India**, Special Leave Petition (Criminal) No. 4634 of 2014 decided by the Supreme Court. It was further argued that the respondent no 2/ED has wide powers not only to attach direct proceeds of crime but also to attach properties at equivalent value of proceeds of crime. Accordingly attached property can be substituted with a property of an equivalent value and by this no prejudice shall be caused to the respondent no 2/ED. It is argued that the application be allowed.

7. Sh. P.V. Yogeswaran, the Counsel for Directorate Of Enforcement/the respondent no 2 advanced arguments on behalf of the respondents and argued that the proceeds of crime as defined under Section 2(1) (u) PMLA is not a mere a property. The applicant/petitioner no 1 placed reliance on Rule 5 (5) of The Prevention Of Money-Laundering (Taking Possession of Attached or Frozen Properties Confirmed By The Adjudicating Authority) Rules, 2013 to contend that the proceeds of crime can be substituted with fixed deposits but said provision is applicable to the properties which



is under “joint ownership”. The counsel for the respondent no 2/ED further argued that attachment proceedings are part of confiscation proceedings and the object of attaching proceeds of crime which is involved in the process of money laundering is to preserve the assets and property and to make available for the purpose of confiscation and to prevent the accused from drawing the fruits of the crime. The counsel for the respondent no 2/ED also advanced other arguments and prayed that the application be dismissed.

8. The respondent no 3 in reply stated that present application is not maintainable before this court on the ground of *forum non convenienc*e as the petitioner and impugned properties and the respondent no 3 are based in State of Madhya Pradesh and referred order dated 02.03.2022 passed in **M/s Faith Cricket Club V Directorate Of Enforcement**, W.P. (C) 3603/2022, CM APPL. 10600/2022 & 10601/2022. It is correct that land admeasuring 26.76 hectares which was attached vide impugned Provisional Attachment Order is situated at Village Saha, Tehsil Raghurajnagar, District Satna (M.P.) and the impugned Provisional Attachment Order 02/2019 dated 23.09.2019 was appearing to be issued by Palash



Bhojar, Deputy Director, Directorate of Enforcement at Indore. However the Original Complaint bearing No.1208/2019 as per section 5(5) PMLA was filed on 14.10.2019 before Adjudicating Authority at Delhi and the Adjudicating Authority also issued a notice to show cause to the petitioner no 1 and others as per section 8(1) PMLA at Delhi. CBI registered FIR bearing RC No 219 2014 (E) 0014 dated 30.07.2014 at Delhi and trial arising out of said FIR is pending in Special Court at Delhi. The respondent no 2/ED on 30.12.2014 also registered ECIR No. 03/INSZO/2014 at Delhi and charge sheet was filed at Delhi and trial is also pending in Delhi. Accordingly it cannot be said that the courts at Delhi do not have jurisdiction to entertain the present petition. The cause of action has been arisen in Delhi. The present petition is maintainable in courts at Delhi.

9. Sh. Vijay Aggarwal, the counsel for the applicant/petitioner no 1 argued that the Authorized Officer has the power to substitute the attached property with a fixed deposit of the equivalent value as per Rule 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating



Authority) Rules, 2013. Sh. P. V. Yogeshwaran, the counsel for the respondent no 2/ED argued that said Rule is applicable to the land which is under joint ownership. The perusal of Rule 5(5) reflects that it is applicable to land which is under joint ownership. There is no legal force in argument advanced by the counsel of the applicant/petitioner no 1 regarding applicability of Rule 5(5).

**10.** Sh. P. V. Yogeshwaran, the counsel for the respondent no 2/ED argued that the High Courts under Article 226/227 of the Constitution can interfere with the order passed by the statutory authorities/tribunals only when it is against principles of justice, equity and good conscience but none of these parameters are met in the instant case. He further argued that any order passed under PMLA can be tested under the provisions of PMLA and High Court while exercising power under Articles 226 and 227 may not downplay the statutory enactment. Sh. Vijay Aggarwal, the counsel for the applicant/petitioners argued that the High Courts can judicially review an administrative order in terms of the *Wednesbury Principles* and cited **Prince Pal Singh V State of Haryana and another**, 2018 SCC OnLine P&H wherein it was held that an



administrative decision is subject to judicial review in exercise of supervisory writ jurisdiction of High Court under Article 226 of the Constitution of India although High Court cannot act as an Appellate Court but the administrative action or even a non-statutory administrative action may relate to judicial review. He further cited **Jayantibhai Patel V Anilbhai Jayantibhai Patel and others**, 2006(8) SCC 200. Sh. Vijay Aggarwal, the counsel for the applicant/petitioners also argued that there is no alternate efficacious remedy available to the applicant/petitioners except to file present petition as the Adjudicating Authority and Appellate Tribunal under PMLA do not have power to release or substitute the attached property. It was further stated that the applicant/petitioners has submitted a representation before the authorized officer for seeking substitution of the attached property which was not permitted by the authorized officer.

**10.1** Section 5 of PMLA deals with attachment of the properties involved in money laundering. Section 8 deals with Adjudication and provides procedure for adjudication. Section 8(1) deals with issuance of notice after receipt of a complaint under section 5(5) PMLA to the



concerned person. Section 8(2) provides hearing to the aggrieved person and the Director after receipt of reply to the notice. The Adjudicating Authority after taking into account all relevant materials by an order records a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering. Section 5 as such does not empower the Adjudicating Authority for release or substitution of the attached property. Section 26 deals with Appeal to the Appellate Tribunal. Section 26(1) provides filing of Appeal by the Director or any person aggrieved by an order made by the Adjudicating Authority. Section 26(4) provides that the Appellate Tribunal on receipt of an appeal may after giving an opportunity of being heard to the parties pass orders for confirming, modifying or setting aside the order appealed against. Section 26 as such does not give any particular and specific power to release or substitute the attached property. The Division Bench of the High Court of Telangana in **Y. S. Bharathi Reddy V Enforcement Directorate** referred **Hetero Drugs Limited V Deputy Director, Directorate of Enforcement, Delhi**, MANU/ML/0032/2015 wherein the Appellate Tribunal held that



there is no provision under the PMLA as well as the Rules framed thereunder which would entitle the appellant to seek replacement of immovable properties under attachment with fixed deposit and observed that the Appellate Tribunal may be right in saying that there is no provision under PMLA and the Rules made thereunder for replacement of attached immovable property for some other property. The Telangana High Court also referred **VGN Property Developers Private Limited V Deputy Director, Directorate of Enforcement**, 2018 SCC OnLine ATPMLA23 wherein it was observed that there is no specific provision under PMLA for substitution of property provisionally attached by the Enforcement Directorate and thereafter confirmed by the adjudicating authority, there is also no provision that the said power cannot be exercised by the Appellate Tribunal under Section 35(1) of PMLA. Accordingly in absence of any specific power vested either with Adjudicating Authority or Appellate Tribunal under PMLA, writ petition under Article 226/227 of the Constitution is maintainable. There is no force in argument advanced by the counsel for the respondent no 2/ED that present writ petition is not maintainable.





**11.** Sh. Vijay Aggarwal, the counsel for the applicant/petitioner no 1 argued for substitution of attached property i.e. land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnar, District Satna worth Rs.4,68,60,710/- with a bank guarantee which is stated to directly linked with the proceeds of crime and also cited various judgments/decisions delivered by the Supreme Court and High Courts as also referred herein below. Sh. P. V. Yogeshwaran, the counsel for the respondent no 2/ED argued to the contrary. **Issue which needs consideration is that whether the attached property directly linked with proceeds of crime can be substituted by any other security including bank guarantee or fixed deposit.**

**11.1** In the present case, the respondent no 2/ED during investigation of ECIR No. 03/INSZO/2014 quantified properties/assets worth Rs. 49.2 crores as proceeds of crime or equivalent to proceeds of crime which were ordered to be attached vide two Provisional Attachment Orders No 01/2019 and 02/2019. The Provisional Attachment Order No.02/2019 dated 23.09.2019 also includes attachment of land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnar, District Satna worth Rs.4,68,60,710/-



and is directly linked with the proceeds of crime. The Adjudicating Authority issued a notice to show cause to the petitioner no 1 and others as per section 8(1) PMLA in pursuance of Original Complaint bearing No.1208/2019 dated 14.10.2019 as per section 5(5) PMLA. The Adjudicating Authority vide orders dated 2.03.2020 and 23.11.2020 has confirmed the Provisional Attachment Order and attachment of the properties attached under section 5(1). The applicant/petitioners have applied for release of the attached land with the authorized officer which was denied vide the communications dated 01.02.2021, 29.09.2021 and 08.11.2021.

**11.1** The Delhi High Court in **Joint Director, Directorate of Enforcement V A. Raja & others**, CrI. L.P. 184/2018 vide order dated 20.09.2023 noted difference between “proceeds of crime” and “amount equivalent to proceeds of crime” and observed that there is a difference between “proceeds of crime” and “amount equivalent to proceeds of crime” and further observed that the court may not agree for substitution of the attached property in case of attachment of proceeds of crime but the court may allow substitution of attached property in case of attachment being on account of equivalent value



of proceeds of crime. This court vide order dated 22.05.2024 in **M/S Gagan Infraenergy Ltd. V Deputy Director, Directorate of Enforcement & another**, W.P.(C) 11264/2021 also expressed agreement with proposition of law as observed in **Joint Director, Directorate of Enforcement V A. Raja & others**.

**11.2** The Supreme Court in various cases has ordered for substitution of attached property. The Supreme Court in Order dated 16.09.2022 passed in SLP (C) no 9335/2022 titled as **Esskay Properties and Investment Private Limited & another V Union of India & others** lifted the attachment order on producing the fixed deposit of Rs. 3,00,00,000/- in lieu of part of the attached property with no lien of any other party except the Enforcement Directorate and order of attachment was allowed to be substituted by fixed deposit although without prejudice to the rights and contentions of the parties in the proceedings to be instituted before the Appellate Authority. It was observed as under:-

**Shri S.V. Raju, learned ASG is not in a position to satisfy the Court why two properties are put to attachment when, at the most, one property was sufficient for the amount involved, i.e., Rs.3,00,00,000/- (Rupees Three Crores). Be that as it may, as the petitioner is ready and willing to deposit Rs.3,00,00,000/- (Rupees Three Crores) in fixed**



**deposit in any nationalised Bank with the lien in faovur of the Enforcement Directorate and the copy of the fixed deposit would be deposited with the E.D., we direct that on producing the fixed deposit of Rs.3,00,00,000/- (Rupees Three Crores), as above, with no lien of any other party, except the Enforcement Directorate and by way of interim order, the attachment with respect to aforesaid properties is ordered to be lifted. Meaning thereby, the order of attachment shall be substituted by the aforesaid fixed deposit. However, the same shall be without prejudice to the rights and contentions of the respective parties in the proceedings to be initiated before the Appellate Authority. The Appellate Authority to deal with and consider the proceedings before it absolutely in accordance with law and on its own merits and without in any way being influenced by the present interim arrangement.**

**11.2.1** The Supreme Court in **Veerbhadrappa G.E. V State of Karnataka & others**, Writ Petition (Criminal) No 124 of 2023 in Interlocutory Application No 61135 of 2023 vide order dated 21.04.2023 passed the direction as under:-

**To secure the ends of justice, in the case at hands, we also direct that in case the petitioner furnishes a fixed deposit receipt of a nationalized bank for a sum of Rs. 1,72,40,951/- with a lien in favour of the CBI and the enforcement directorate within a period of two weeks from today, the attachment of all the properties vide provisional attachment order dated 29.06.2018 by the enforcement directorate shall be lifted. The said fixed deposit receipt would be subject to the final outcome of the proceedings against the petitioner in pending CBI matters as well as PMLA matters.**



**11.3** The Division Bench of the High Court of Telangana in order dated 28.11.2022 passed in CMSA no 15 of 2019 titled as **Y. S. Bharathi Reddy V Enforcement Directorate** referred **VGN Property Developers Private Limited V Deputy Director, Directorate of Enforcement**, 2018 SCC OnLine ATPMLA23 and observed as under:-

**In that decision, Appellate Tribunal referred to Section 35(1) of PMLA, which empowers the Appellate Tribunal to regulate its own procedure. Appellate Tribunal observed that though it is true that there is no specific provision under PMLA for substitution of property provisionally attached by the Enforcement Directorate and thereafter confirmed by the adjudicating authority, there is also no provision that the said power cannot be exercised by the Appellate Tribunal under Section 35(1) of PMLA. In the facts of that case, prayer of the appellant for releasing the attached property was allowed by accepting the alternative property offered by the appellant. However, we may point out that even this decision was rendered by the Appellate Tribunal when appellate proceedings were pending before the Appellate Tribunal with the provisional attachment order and confirmation order still holding the field.**

**23. Before we advert to the order of the Appellate Tribunal insofar the related appeal is concerned, we may mention about Rule 5(5) of the Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 which says that where the attached immovable property as confirmed by the adjudicating authority is in the form of land, building, house, flat etc. and is under joint ownership, the authorised officer may accept the equivalent value of**



**fixed deposit to the extent of the value of the share of the concerned person in the property estimated by the authorised officer to be involved in money laundering. Therefore, it would not be correct to say that PMLA as well as the Rules framed thereunder does not have any provision for accepting alternative equivalent value of attached property.**

The Division Bench of the High Court observed that the Court is well within its power to alter or modify the status quo order passed by it and the interest of opposite party/appellant would be protected by directing various parties to provide bank guarantee equivalent to Rs.192 crores. The Order passed by the Division Bench of Telangana High Court was affirmed by the Supreme Court vide Order dated 14.07.2023 passed in Special Leave Petition (Criminal) no. 22285/2023 titled as **Enforcement Directorate V Y. S. Bharathi Reddy**. It was observed as under:-

**In the impugned orders, a finding has been recorded that the property which was attached, was acquired from the proceeds of the crime. This finding is not disputed by the petitioner. Moreover, it is not the case of the petitioner that value of the attached property mentioned in the impugned orders is incorrect.**

**In view of this factual position, we decline to entertain these Special Leave Petitions and the same are accordingly disposed of.**



**11.4** The different Coordinate Benches of High Court of Delhi also passed similar orders. Vide order dated 15.10.2020 passed in **Jai Durga Industries & another V Union of India**, W.P.(C) 6314/2020, this court allowed release of attached immovable property i.e. flat from attachment on deposition of equivalent amount by way of Fixed Deposit with the Registrar General with certain conditions. This court **Santur Builders Pvt. Ltd. V Deputy Director, Directorate of Enforcement**, WP(C) No 5502/2023 vide order dated 09.01.2024 allowed land in question which was attached by a Provisional Attachment Order to be substituted by Fixed Deposit with condition of its periodical renewal till end of the trial.

**11.5** This court in writ petition W.P. No 11264/2021 vide order dated 22.05.2024 while deciding application no 12347/2024 observed the court may not order substitution of attached property in case of attachment due to proceeds of crime. However, in view of various orders passed by the Supreme Court and High Courts including Delhi High Court as referred herein above, the present application can be allowed.



**12.** Sh. Vijay Aggarwal, the counsel for the applicant/petitioners also stated that the respondent no 2 vide impugned Provisional Attachment Order also provisionally attached immovable property admeasuring 18.928 hectares situated at Village Sejwaya, Tehsil & District Dhar (M.P.) having a total value of Rs. 20,96,00,000/- to the extent of Rs. 15,34,44,950/- while land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnar, District Satna (M.P.) which is sought to be having a total value of Rs. 4,68,60,710/- . Accordingly as an alternative arrangement/substitution, entire immovable property admeasuring 18.928 hectares can be ordered to be attached which will also include value of 26.76 hectares amounting to Rs. 4.68,60,710/-.

**13.** In view of above discussion the land admeasuring 26.76 hectares situated at Village Saha, Tehsil Raghurajnar, District Satna (M.P.) having a total value of Rs.4,68,60,710/- and attached vide impugned Provisional Attachment Order No 2/2019 dated 23.09.2019 is ordered to be substituted by bank guarantee of equivalent amount to be furnished by the applicant/petitioner no 1 in favour of the respondent no 3 within 15 days who shall be having lien over said FDR. The





bank guarantee shall be kept alive by periodical renewal till conclusion of trial arising out of ECIR bearing no. 03/INSZO/2014. If the respondents succeed in present petition then the respondent no.2 shall be at liberty to encash the bank guarantee. The applicant/petitioner no 1 is also directed to submit an undertaking by way of affidavit that the applicant/petitioner no 1 shall not create any interest in favour of any other person or entity in respect of said bank guarantee. The arguments advanced by Sh. P.V. Yogeshwaran are considered in appropriate perspective but in context of present application are not providing much legal assistance to the respondents. The claim of the applicant/petitioner no 1 subject matter of present application is legally justified and supported by various decisions of the Supreme Court and High Courts including Delhi High Court.

**14.** The application is allowed. It is made clear that nothing in this order shall be taken as an opinion or expression on merits of the case.



**W.P.(C) 13566/2019 & CM APPL. 54871/2019, CM APPL. 31289/2022, CM APPL. 32771/2023 & CM APPL. 32772/2023**

List on 29.07.2024, the date already fixed.

**DR. SUDHIR KUMAR JAIN  
(JUDGE)**

**MAY 27, 2024/j/hvk**