

(2021) 01 ATPMLA CK 0002

Appellate Tribunal Under Prevention Of Money Laundering Act**Case No:** MP-PMLA-8006, 8008, 8011, 8014, 8017, 8020, 8023, 8026/JP/2020,
FPA-PMLA-3843, 3844, 3846, 3847, 3848, 3849, 3850, 3851/JP/2020

Mahesh Chand Sharma & Ors

APPELLANT

Vs

Deputy Director Directorate Of
Enforcement, JaipurRESPONDENT

Date of Decision: Jan. 29, 2021**Acts Referred:**

- Prevention Of Money Laundering (Taking Possession Of Attached Or Frozen Properties Confirmed By The Adjudicating Authority) Rules, 2013 - Rule 5(2)
- Prevention Of Money Laundering Act, 2002 - Section 8(4)

Hon'ble Judges: G. C. Mishra, Acting Chairman**Bench:** Single Bench**Advocate:** Naveen Malhotra, Ankit Sharma, Shilpi Satyapriya Satyam

Judgement

G. C. Mishra, Acting Chairman

MP-PMLA-8006/JP/2020 (Stay), MP-PMLA-8008/JP/2020 (Stay),

MP-PMLA-8011/JP/2020 (Stay), MP-PMLA-8014/JP/2020 (Stay),

MP-PMLA-8017/JP/2020 (Stay), MP-PMLA-8020/JP/2020 (Stay),

MP-PMLA-8023/JP/2020 (Stay) & MP-PMLA-8026/JP/2020 (Stay)

Along with the appeals the appellants/applicants have filed applications seeking ad-interim stay on the operation of impugned order dated 14.12.2020.

During the pendency of the appeals as well as stay applications, the appellants/applicants received eviction notices all dated 09.01.2021 issued under

Section 8(4) of the PML Act, 2002 read with Rule 5(2) of the Prevention of Money-Laundering (Taking Possession of Attached or Frozen Properties

confirmed by the Adjudicating Authority) Rules, 2013, asking the appellants to vacate the following properties and to hand over the possession of same to the respondent (ED) within the stipulated 10 days period from the date of receipt of the notices. The said notices all dated 09.01.2021 were served on the appellants on the same date and the stipulated 10 days expired on 18.01.2021, so the applications were taken up for hearing on 15.01.2021 and a temporary "status quo" order was passed.

The properties listed in the aforesaid eviction notices are as below:

(i) Plot No.1, Group Housing Yojana, Khasra no.1440/1, 1440/2, 1441/1, 1441/2, 1442/2, Village " Muhana, Tehsil " Sanganer R.

No.2009398000062 dated 06.01.2009. Area " 7254.23 Sq. Yd.

(ii) Plot No.34AB, Avasiya Yojana, Satya Colony, Vaishali Nagar, Jaipur R.No.2011067002802 dated 18.03.2011 Area " 257.22 Sq.

Yd. (215.06 Sq. Mtr.)

(iii) Plot No.34A, Avasiya Yojana, Satya Colony, Vaishali Nagar, Jaipur R.No.2011067002801 dated 18.03.2011 Area " 256.41 Sq. Yd.

(214.38 Sq. Mtr.)

(iv) Plot and constructed area at Village Hirapura, Jhotwara, Jaipur R.No.2011067007845 dated 03.08.2011 Plot Area " 222.96 Sq.

Mtr. and constructed area 931.92 Sq. Ft.

(v) Agriculture Land Khasra No.298/4, Rakba 6 Bigha out of 10 Bigha at the east end, Village " Gulgaon, Tehsil " Malpura, Tonk R.

No.2005001745 dated 08.07.2005. Area " 6 Bigha.

(vi) Agriculture Land " ½ share in Khasra No.782, Rakba 0.50 Hectare at Village " Katkad, Tehsil " Hindon City, Dist. "

Karuali R.No.2004001228 dated 14.05.2004 Area " 0.25 Hectare.

(vii) 22 plots bearing Plot nos. 29 to 38, 69 to 80 at Aryan City, Phase " I Scheme, Muhana, developed by the Rajhans Society Each Area

" 233.33 Sq. Mtr X 22 plots. Total = 5133.26 Sq. Mtr.

(viii) Agriculture Land " Khasra No.1037, Rakba 0.46 Hectare, Hisa 1/2, and Khasra No. 1034 Rakba 0.12 Hectare Hisa 27/118, Village

â€" Shri Rampur, Tehsil â€" Sanganer, Distt. â€" Jaipur R.No.2009067001173 dated 04.03.2009. Area â€" Rakba 0.46 Hectare, Hisa ½

and Rakba 0.12 Hectare Hisa.

(ix) Plot No.98, Neelkanth Colony, Ajmer Road, Jaipur R. No.2008067007690 dated 20.10.2008. Area â€" 110 Sq. Yards (91.97 Sq. Mtr.)

(x) House No.04, Neel Kanth Colony, Ajmer Road, Jaipur R. No.2009399001248 dated 20.03.2009. {Plot Area â€" 250 Sq. Yards (209.03

Sq. Mtr. First Floor covered area 2030 Sq. Fts. And Second Floor covered area 1545 Sq. Fts.}

(xi) Plot No.20, Ganesh Nagar, Village Khejro Ka Baas (URF Balrampur), Tehsil â€" Sanganer, Jaipur R. No.2009401002310 dated

22.05.2009 Area â€" 430.18 Sq. Yrd. (359.68 Sq. Mtr.)

(xii) Plot with building/house and three shops situated at 119/491, Mansarovar, Madhyam Marg, Jaipur. Area â€" 114.42 Sq. Mtr.

Residential, (total covered area 3693.98 sq. fts in G+2) Shop area 47.58 Sq. Mtr. Total â€" 162 Sq. Mtr.

(xiii) Fixed assets including land building constructed at plot situated at Shipra Path, Mansarovar, Jaipur in the name of RAG Memorial

Trust including RAG Hospital.

During the course of hearing the learned counsel for the appellants/applicants referred to the page no(s).402 to 404 of the impugned order containing

part of Para No.18 on the conclusion of money laundering. By referring to the said order the learned counsel for the appellants/applicants submitted

that the Adjudicating Authority has found that the proceeds of crime as has emerged from the investigation relating to the scheduled offence is only to

the tune of Rs.10,60,10,743/-and not Rs.14,60,10,743/- as the respondent (ED) has subsequently found more properties.

The learned counsel for the appellants/applicants has referred to the explanations with regards to each and every property attached in the present

proceedings. It is submitted by him that properties at serial no.(i) to (iv) are owned by M/s. Safe Infracon Pvt. Ltd. and that appellant Smt. Meena

Devi has no shareholding in the said company and not a single penny has been invested by Smt. Meena Devi Sharma in her personal capacity and Shri

Mohit Sharma has also not made any investments in his personal capacity in the company. The company is a separate legal entity and there is no proof on record that either the appellant Smt. Meena Devi or Shri Mahesh Chand Sharma or Shri Mohit Sharma have invested in the aforesaid properties no.(i) to (iv) owned by the company.

With regards to property at serial no.(v) above, it is submitted by the learned counsel for the appellants/applicants that this property was purchased in the year 2005 by the appellant no.1 Shri Mahesh Chand Sharma for a consideration amount of Rs.1.5 Lakh which has been sold by the vendor again to one Shri Mukesh Kumar Aggarwal for which FIR has been filed by appellant no.1 against the vendor Shri Satya Narain Sharma and his family members and the said amount of Rs.1.5 Lakh has been paid from the money received out of the probated Will of Shri Hatila Ram Bohra, the father of Shri Mahesh Chand Sharma and in spite of the direction of the Honâ€™ble High Court of Rajasthan at Jaipur directing the ED and other investigating agencies to consider the probated Will, the same has not been considered by them.

With regard to property at serial no.(vi) above, it is submitted by the learned counsel for the appellants/applicants that the same has been purchased by the appellant no.1 in the name of Smt. Meena Devi for Rs.70,000/- from Shri Ram Swaroop and Shri Hazari Lal who were family members of the noticee Smt. Meena Devi and this cannot be termed as property acquired out of proceeds of crime.

With regards to property at serial no.(vii) above, during the course of hearing, the appellants/applicants did not seek any relief for the said property.

With regards to property at serial no.(viii) above, it is submitted by the learned counsel for the appellants/applicants that this property belongs to M/s.

Swastik Samajik Seva Sansthan, a society registered under Rajasthan Society Registration Act, 1958 and in which there are two members and Smt.

Meena Devi is the secretary in that Sansthan (Society) and that the amount of Rs.7,81,000/-, which were collected through donations, were paid towards the consideration amount of the said property and this property being the property of the said society, so the amount as well as the property cannot be treated as proceeds of crime.

With regards to properties at serial no(s).(ix) to (xi) it is explained by the learned counsel for the appellants/applicants that that these properties belong to Saket Nursing College, which is registered as an association of person, which have been acquired out of fees, etc. collected from students and only because Smt. Meena Devi, Dr. Mohit Sharma or Shri Ankit Sharma, the appellants are directors, the properties of the college cannot be attached and the possession of the same would jeopardize the future and career of hundreds of students.

With regards to property at serial no.(xii) above, it is submitted by the learned counsel for the appellants/applicants that the same belongs to Shri Mahesh Chand Sharma, the appellant no.1 and this property has been acquired after his termination from service and that the ACB, Jaipur has also not added this property as part of list of properties in the disproportionate of assets case.

With regards to property at serial no.(xiii) above, it is submitted by the learned counsel for the appellants/applicants that the property belongs to RAG Hospital and is under lease from Rajasthan Housing Board and he has explained the acquiring of property at serial no.(xiii) above in detail.

On the aforesaid grounds, the learned counsel for the appellants/applicants has prayed for adâ€"interim stay of the impugned order and also submitted for the staying of the operation of the impugned notices.

On the other hand, the learned counsel for the respondent (ED) strongly raised objection for grant of any stay on the operation of the impugned order as well as stay on the operation of the impugned notices.

It is submitted by her that the properties at serial no.(i) to (iv) belongs to the company M/s. Safe Infracon Pvt. Ltd. so, Smt. Meena Devi should not have any objection if these properties are attached and possession is taken.

With regards to property at serial no.(v) she has specifically made reference to last few lines of para no.iii at page no.45 of the Original Complaint and submitted that proceeds of crime has been routed and used to acquire this property.

With regards to property at serial no.(vi) she has specifically made reference to para no(s).iii & v. at page no(s).47 & 48 respectively of the Original

Complaint and submitted that the appellant Shri Mahesh Chand Sharma and his Smt. Meena Devi Sharma did not cooperate in the investigation and could not justify the source of cash available with them and that the property has been included in the Charge Sheet of ACB, Jaipur while calculating the disproportionate assets.

With regards to property at serial no.(viii) the learned counsel for the respondent has specifically made reference to para no(s).vi, vii, viii & x. at page no(s).57, 58 & 59 respectively of the Original Complaint and submitted that the Sansthan is only on papers and nobody would donate to such a society and that Shri Mahesh Chand Sharma and Smt. Meena Devi did not cooperate in the investigation and cash was placed/deposited in the bank accounts and was routed through various banks and the Sansthan is a shell entity only to launder and project the proceeds of crime acquired by the appellant no.1 and his family members.

With regards to properties at serial no.(ix) to (xi) she has specifically made reference about the property at serial no.(ix) to para no(s).iii of page no.62 and also refer to the statement of account maintained by Saket Nursing College with the Integral Urban Co-operative Bank, and thereafter refer to page no.64 and submitted that before remitting amount of Rs.2,50,000/- to the seller of the property, cash was infused in the bank account and she has also submitted that property at serial no.(x) & (xi) were also acquired in the same manner.

With regards to property at serial no.(xii) she has specifically made reference to para no(s).11.5 at page no(s).89 & 90 respectively of the Original

Complaint and submitted that this property has been acquired by way of agreement to sale and the said agreement does not have the date of agreement in the first and last page of the same as they were blank and the said agreement is witnessed by the appellant Dr.Mohit Sharma and Shri Ankit Sharma, who are the sons of Shri Mahesh Chand Sharma.

The learned counsel for the respondent (ED) further has made reference to statement of Shri Shiv Charan Sharma, brother of appellant Shri Mahesh Chand Sharma as described in para no(s).11.12 at page no(s).138 & 139 respectively of the Original Complaint and submitted that his brother denied

any loan to M/s. Safe Infracon Pvt. Ltd. but had given loan of Rs.12.7 Lakhs to Shri Mahesh Chand Sharma through cheques but he do not remember

in whose name he had given these cheques and that he disputed the execution of Will dated 07.11.1998 of his father Shri Hatila Ram in favour of Smt.

Meena Devi.

With regards to property at serial no.(xiii) the learned counsel for the respondent (ED) has made reference to page no(s).100 onwards of the Original

Complaint and submitted that details of the money trails of flow of proceeds of crime placed in the RAG Trust as explained in the table through inter

connected transactions in those bank accounts through various complex maze and the money routed to RAG Trust are nothing but proceeds of crime.

The learned counsel for the respondent has also specifically made reference to para no(s).12 & 13 at page no(s).144 & 145 respectively of the

Original Complaint and submitted that the appellant no.1 Shri Mahesh Chand Sharma followed the dubious process in acquiring these properties but

mostly avoided in getting registered the same in his or his family members name and used to get the properties papers from the seller in the form of

Ikrarnama, power of attorney, vasiyatnama and other form, so that he may get it transferred in any ones name as per his convenience.

On the basis of above, the learned counsel for the respondent (ED) submitted that the appellants/applicants do not deserve any order of stay on

operation of the impugned order nor any case has been made out to pass an order of status quo with respect to the eviction notices.

Heard both sides and perused the materials made available in the record. In total there are 13 properties mentioned above, against which the notices

are issued under Section 8(4) of the PMLA, 2002 read with Rule 5(2) of (Taking Possession of Attached or Frozen Properties Confirmed by the

Adjudicating Authority) Rules, 2013.

No relief has been claimed by the appellants/applicants with respect to property at serial no.(vii) above during the course of hearing.

So far as the properties at serial no(s).(i) to (iv) above are concerned, it is submitted that the properties are in the name of the appellant no.5 M/s.

Safe Infracon Pvt. Ltd., in which the appellant no.4 Smt. Meena Devi Sharma is the one of the Directors and that all the aforesaid properties at serial

no(s).(i) to (iv) are purchased in the name of the company and owned by it which is not denied by the respondent. The allegation of the respondent

that the company is a shell company and does exist on papers only. The existence of the company will be decided at the time of hearing of the appeal

on merit. At this stage it is an admitted fact that the properties are in the name of the company and the same is prima facie clear therefore, at this

stage, it would be proper to grant ad-interim order of status quo till the next date of hearing. Therefore, both the parties are directed to maintain status

quo with respect to these four properties mentioned at serial no(s).(i) to (iv) above, subject to the conditions mentioned at the end of this order.

So far as the properties at serial no.(v) & (xii) above are concerned, it is submitted that the property at serial no.(v) is an agricultural land and was

purchased by the appellant no.1 against consideration of Rs.1.5 Lakh cash in 2005 and the property at serial no.(xii) consists of plot with building and

three shops situated at 119/491, which belongs to appellant no.1 by way of agreement to sale and consideration amount of that property is stated to be

Rs.57 Lakhs and not found part of Charge Sheet filed by ACB, Jaipur and that Rs.57 Lakhs. The consideration amount for both the properties are

stated to have been paid out of the amount received from the probated Will executed by Shri Hatila Ram Bohra, father of the appellant no.1 Shri

Mahesh Chand Sharma and it is stated that the said probate had been decreed by the competent court. It is the objection of the respondent, on the

basis of the statement made by the brother of Shri Mahesh Chand Sharma, that the Will is a forged one, so that cannot be relied upon and that the

property at serial no.(xii) was not disclosed but the same was found during the course of investigation under PMLA. The thing is that the Will stated to

have been probated and decreed by the competent court and that at this stage for the purpose of hearing on stay applications there is nothing on

record contrary to the above decree of the court and it is also submitted during the course of hearing that the respondent is investigating into the

genuineness of the Will. That being so, at this stage, the appellant no.1 has a prima facie case for grant of ad-interim order of status quo till the next

date of hearing. Therefore, both the parties are directed to maintain status quo with respect to the properties mentioned at serial no(s).(v) & (xii)

above, subject to the conditions mentioned at the end of this order.

So far as the property at serial no.(vi) above is concerned, it is submitted that the property was found purchased for a consideration amount of

Rs.70,000/- by Shri Mahesh Chand Sharma in the name of his wife Smt. Meena Devi Sharma from Shri Ram Swaroop and Shri Hajari Lal through

registered sale deed dated 14.05.2004. On perusal of the papers regarding the source of the purchase of the property it appears that neither Shri

Mahesh Chand Sharma nor Smt. Meena Devi could be able to substantiate the source of the amount paid towards the consideration of the aforesaid

property therefore, I do not find that there is any prima facie case for issue of any stay/status quo order with respect to this property. So no relief can

be granted with respect to the property at serial no.(vi) above.

So far as the property at serial no.(viii) above is concerned, it is shown as property belongs to M/s. Swastik Samajik Sewa Sansthan purchased

through the appellant Smt. Meena Devi in the capacity of Secretary of that Sansthan (Society). It is revealed from the record that the aforesaid

society was created for the purpose of running college under its name but no permission was granted and that the society is managed by appellant

Smt. Meena Devi. This property has been purchased for Rs.7,81,000/- and as per the sale deed the purchase consideration was paid as Rs.31,000/- in

cash and Rs.7,50,000/- through two cheques for Rs.4,50,000/- and Rs.3,00,000/- drawn from SBBJ. During the course of hearing it was contended by

the learned counsel for the appellants that the aforesaid amounts have been collected from the members of the society through donations and it was

shown in the Income Tax Returns of the society and that none of the members of the society have been examined and that the attachments have been

done mainly on the basis of the FIR registered by ACB. On the other hand the learned counsel for the respondent submitted that the cheque of

Rs.3,00,000/- was found cleared, however, the other cheque for Rs.4,50,000/- was found not cleared and Rs.3,00,000/- was managed out of cash

deposits and the possibility of payment of remaining amount of Rs.4,50,000/- in cash could not be ruled out and that the amount so utilized in

purchasing this property has been infused out of the money received as illegal gratifications and the Sansthan is not doing any effective work or

business, nature of any such donation appeared to the respondent as dubious.

In this regard it is seen that the property at serial no.(viii) above has been purchased in the name of the Sansthan in which the appellant Smt. Meena

Devi is the Secretary. The consideration amount paid towards purchase of this property is dubious or not would be examined at the time of hearing of

the appeal on merit. The appellant society, for the purpose of grant of the order of status quo, has made out a prima facie case. Therefore, both the

parties are directed to maintain status quo with respect to the property mentioned at serial no.(viii) above, subject to the conditions mentioned at the

end of this order.

So far as the properties at serial no.(ix) to (xi) above are concerned, it is an undisputed fact that these properties are purchased and registered in the

name of M/s. Saket Nursing College through its Director Smt. Meena Devi, which is a running college, wherein students are studying and that it is

submitted that closure report has been filed by the ACB in the Court of Law against the College. The taking of physical possession of these properties

at this stage may jeopardize not only the interest of students but also the interest of public at large, therefore, prima facie it appears and it would be in

the interest of justice to grant an order of status quo with respect to these properties at serial no.(ix) to (xi) above, till the next date of hearing.

Therefore, both the parties are directed to maintain status quo with respect to the properties mentioned at serial no.(ix) to (xi) above, subject to the

conditions mentioned at the end of this order.

So far as the property at serial no.(xiii) above is concerned, it is undisputed fact that this property is fixed assets including land and building situated at

Shipra Park, Mansarovar, Jaipur in the name of M/s. Ram and Amit Gupta (RAG) Memorial Trust. It is a functioning hospital and that the said

property is being run by RAG Memorial Trust, which was formed on 07.10.1996. RAG Hospital stated to have been on lease from Rajasthan Housing

Board. As per page no.94 of the Original Complaint, there are several trustees including four of the individual appellants above. The above facts has

made out a prima facie case for grant of order of status quo as in the event, the physical possession of the Hospital is taken over, then the public at

large will be the sufferer. Therefore, in the interest of justice, it will be proper to grant an order of status quo with respect to the property at serial no.

(xiii) above, till the next date of hearing. Therefore, both the parties are directed to maintain status quo with respect to the property mentioned at serial

no.(xiii) above, subject to the conditions mentioned below:

The aforesaid orders of ad-interim "status quo", with respect to the aforesaid properties except the properties mentioned above at serial no.(vi)

& (vii), is granted subject to the following conditions:-

i. Attachments shall continue.

ii. The appellants are prohibited to create any third party right, transfer, mortgage or otherwise dispose of the properties in question in any manner.

iii. Neither party is allowed to alter the nature and character of the properties in question, as on today.

iv. No encumbrance shall be created by the appellants in respect of the properties in question.

FPA-PMLA-3843/JP/2020, FPA-PMLA-3844/JP/2020, FPA-PMLA-3846/JP/2020,
FPA-PMLA-3847/JP/2020, FPA-PMLA-3848/JP/

2020, FPA-PMLA-3849/JP/2020, FPA-PMLA-3850/JP/2020 & FPA-PMLA-3851/JP/2020

The learned counsel for the respondent (ED) seeks six weeks time to file the replies to the appeals as well as stay applications, which is not objected.

The learned counsel for the respondent is granted six weeks time to file replies to the appeals as well as stay applications with advance copies to the

other side, who may file rejoinders to replies to the appeals, if any, within four weeks thereafter with advance copy to the other side.

With the consent of both the parties, list the appeals on 27th April, 2021.

Copy of the order be given "dasti" to both the parties.