

## Savita Dhananjay Datar Vs Deputy Director, Directorate Of Enforcement, Ahmedabad

**Court:** Appellate Tribunal Under Prevention Of Money Laundering Act

**Date of Decision:** Aug. 3, 2023

**Acts Referred:** Constitution Of India, 1950 " Article 226

Prevention of Money Laundering (taking possession of attached or frozen properties confirmed by the Adjudicating Authority) Rules, 2003 " Rule 5(2)

Prevention Of Money Laundering Act, 2002 " Section 2(1)(u), 3, 5, 5(1), 5(4), 8(1), 8(4), 8(5), 8(6), 8(7), 24, 73

Prevention of Corruption Act, 1988 " Section 13(1)(d), 13(2)

Indian Penal Code, 1860 " Section 120B, 409, 420

Code Of Criminal Procedure, 1973 " Section 482

**Hon'ble Judges:** Munishwar Nath Bhandari, Chairman; V. Anandarajan, Member

**Bench:** Division Bench

**Advocate:** Hardik Sharma, Rachit Bansal, Nidhi Raman

### Judgement

FPA-PMLA-5846/AHD/2023

By this order, we are deciding the application moved by the appellant on service of notice under Section 8 (4) of the Prevention of Money Laundering

Act, 2002 (in short the Act of 2002) read with sub-rule 2 of rule 5 of the Prevention of Money Laundering (taking possession of attached or frozen

properties confirmed by the Adjudicating Authority) Rules of 2003 (in short the Rules of 2003) for possession of following properties: -

1. Flat No. 6B, Siddhi Apartment, Opp. IDBI Bank, Near Siddhivinayak Savita Temple FP No. 967 of TPS IV, Mahim, Shankar Ganekar Marg,

Prabhadevi, Mumbai-25.

2. Flat No. B-1/61, Gagan Apartment, Gokuldharm, Goregaon (East), Mumbai.

3. Flat No. 87A, Reso Villa, Deharje Village, Palghar District, Maharashtra.

The learned counsel for the appellant submitted that the respondent had passed a provisional attachment order after recording ECIR. The provisional

attachment order was confirmed by the Adjudicating Authority. An appeal has been preferred to challenge the said order. After confirmation of the

provisional attachment by the order dated 14.03.2023, the respondent issued a notice under Section 8(4) of the Act of 2002 on 12.04.2023 for

possession of the properties referred to above. The notice for possession has been issued without giving any exceptional reasons rather caused as a

rule. It is byignoring the judgment of the Apex Court in the case of Vijay MadanlalChoudhary vs. Union of India reported in 2022 SCC Online SC 929.

The notice for possession dated12.04.2023 does not give any exceptional reasons so as to evict the appellant from properties referred above. In

absence of disclosure of exceptional reasons in the notice despite a mandate of the Apex Court in the case of Vijay MadanalChoudhary(Supra), the

impugned notice for possession deserves to be stayed during the pendency of the appeal. The respondents have filed reply to supply exceptional

reasons for taking possession but when impugned order does not containreasons, it cannot be now supplemented by way of reply. The counsel for the

appellant has referred to the judgment of the Apex Courtin the case of OPTO Circuit India Ltd. v/s Axis Bank reported in (2021) 6 SCC 707to

emphasize that reasons needs to be given in the notice and cannot be supplemented. The counsel for the appellant has made further reference of

following judgements: -

1. TheÃ, JudgmentÃ, ofÃ, HonÃ¢â¬â¢bleÃ, SupremeÃ, CourtÃ, inÃ, M/s KrantiAsso. Pvt. Ltd. &Anr. vs Masood Ahmed Khan (2010) 9 SCC 496

2. The judgment of HonÃ¢â¬â¢ble Supreme Court of India in Union of India v. Mohan Lal Capoor, (1973) 2 SCC 836

3. The Judgment of HonÃ¢â¬â¢ble Punjab and Haryana High Court in Prince Pal Singh Versus State of Haryana and Another 2018 SCC OnLine P &

H 7242

4. The judgment of HonÃ¢â¬â¢ble Delhi High Court in the matter of Jugal Kishore vs. Lt. Governor, Delhi and Ors. 2017 (2) JCC 1335

5. The Judgment of HonÃ¢â¬â¢ble Supreme Court of India in the case of JayrabhaiJayantibhai Patel vs. AnilbhaiJayantibhai Patel and Ors. 2006 (8)

SCC 200.

It is to support the argument that an administrative order should not be passedwithout assigning reasons. A non-speaking order is not sustainable in the

eyes of Law. The administrative order needs to passed containing reasons to support it so that the Court or Tribunal may examine the justification

given therein. The impugned order does not contain reasons to make out a case of exceptional nature. It is further submitted that Flat No. 6B, Siddhi

Apartment has been occupied by mother-in-law of the appellant for last six years. The appellant also resides there but presently she is travelling out of

India with the permission of Gujrat High Court. In Flat No. B-1/61, Gagan Apartment, Mrs. ShrimatiSawaleMrudula Ananta is residing as tenant.

Leave and License agreement was entered in the year 2021 and so far as Plot No. 87 A is concerned, it is under occupation of the brother-in-law of

the appellant. Since, all the properties have been occupied by one or other person, eviction from those properties would cause inconvenience to the

appellant and otherwise there exists no exceptional reason to seek possession of the property.

The counsel for the appellant has otherwise made reference of the facts of this case. It is stated that the Flat No. 6-B, Siddhi Apartment was acquired

on 09.11.2017 from Aries Management Service Pvt. It has been considered to be proceeds of crime and accordingly attached. However, the other

properties i.e., Flat No. B-1/61, Gagan Apartment and Plot No. 87 A in Reso Villa, have been attached for the value of the proceeds of crime and

thereby it was not acquired out of the proceeds of crime. The property of Siddhi Apartment was purchased by the appellant alongwith her husband

DhananjayDatar through sale deed dated 09.11.2017. The said property was purchased from Aries Management Pvt. Ltd on the understanding with

the Yes Bank Ltd. that Aries Management would repay the dues of Yes Bank out of the sale of the property. The appellant was otherwise having her

own income out of salary, gains from the share, professional fees earned by the defendant No. 18, rental income. The purchase of attached properties

was not out of the proceeds of crime, but from appellants own sources. She had even redeemed funds to get One Crore to purchase Siddhi Apartment

Flat. The amount was also taken from the friends and the relatives. The details of transaction has been given. The appellant's husband received

total consideration of 3.95 Crores even from sale of DB Woods Flat at Goregaon. The Flat No. B-1/61, Gagan Apartment was purchased in the year

of 2004, i.e., much prior to the alleged offence. The source of funds to purchase the aforesaid property has also been given. Plot No. 87A, Reso Villa

has also been attached for value equivalent to the proceeds of crime. The said property was purchased by the appellant alongwith her husband

DhananjayDatar in the year of 2013. The husband DhananjayDatar was working with ABG Shipyard and was drawing salary. The purchase of Flat in

Siddhi Apartment has been taken to be the proceeds of crime and other properties were attached for the value thereof to the proceeds of crime. The

appellant had nothing to do with alleged fraud of Rs. 22842 Crores said to have been committed by ABG Shipyard Ltd.

The facts available on record shows that the appellant has not taken advantage of proceeds of crime of ABG Shipyard rather purchased properties

out of their own funds. Ignoring the aforesaid, the properties were attached followed by notice for its possession.

The learned counsel for appellant has given reference to the judgment of the Apex Court and also of various High Courts to support his argument. The

first judgement referred by the appellant is in case of Vijay Madanlal Choudhary (Supra). Reference of para 304 to 307 of the judgement (Supra) has

been given. It is submitted that stage of taking possession of the property comes on an order of confiscation. In the instant case, the stage of

confiscation has not yet come rather it would be on conclusion of the trial and only when an order of conviction is passed. It is not a case where

exceptional circumstance exist. In the case of Union of India Vs Ganpati Dealcom Pvt. Ltd. dated 23.08.2022 in Civil Appeal No. 5783/2022, the Apex

Court has illustrated out few exceptions for taking possession. It can be when appellant is involved in terrorist activities or in drug cartels. It can also in

a case of organized crime. The case in hand is not falling in any of such category thus referring to the aforesaid judgment, the appellant prayed for an

interim order.

The another judgment referred by the counsel for the appellant is of Telangana High Court in the case of State Bank of India vs The Deputy Director

Directorate of Enforcement in writ petition (c) 5744/2022 dated 22nd March, 2023. In that case, the judgement of the Apex Court in the case of Vijay

Madanlal Choudhary (Supra) was elaborately discussed and relied and it was held that a notice for possession can not be given as a rule but as an

exception and thereto when it reaches to the stage of confiscation of property.

The learned counsel for the appellant has given reference of the judgment of this Tribunal in the case of Karti P. Chidambaram vs The Deputy

Director, Directorate of Enforcement dated 03.09.2019. We are not elaborately referring to those judgments as it would be nothing but repetition of

the ratio propounded by the Apex Court in the case of Vijay Madanlal Choudhary (Supra).

Other than the argument aforesaid, no other argument was raised by the counsel for the appellant thus, we would be recording our finding only on the

grounds raised orally before us.

The application is seriously contested by the learned counsel for the respondent. A detailed reply to the application has been filed to justify the notice

for possession by invoking Section 8 (4) of the Act of 2002 read with rule 5 (2) of the rules of 2013. The counsel for the respondent has given

complete background of the case to show how ABG Shipyard and other companies cheated and committed fraud on the consortium banks to obtain

loan of Rs. 22,842 Crores and appellant became part of it. The complete facts in that regard have been narrated and would be referred by us while

dealing with rival arguments of the parties. The counsel for the respondents has reasons to carve out an exception to take possession of the flat in

question.

The appellant along with other associated companies of ABG Shipyard Ltd. got involved in organized crime. It would be coming out from the narration

of facts given in the ECIR and even referred in the Provisional Attachment Order, so also in the order passed by Adjudicating Authority. The facts

would show how ABG Shipyard Ltd. alongwith its subsidiary and associated companies committed fraud in an organized manner on the consortium

banks. The loan of Rs. 22,842 Crores was taken by manipulating the books of accounts and instead of using the said fund for the purpose, it was

diverted in a planned manner by giving it to subsidiary and associate companies. The funds were diverted out of India also and are not available. The

loan was otherwise taken by committing fraud. All those facts came on an Audit after the matter was taken for insolvency before NCLAT. The way

fraud was committed not only shows the intention of the appellant and other companies but would show the organized crime. If the proceeds of crime

is out of the organized crime, the possession of the property thereupon is considered to be on exceptional ground. To support the argument, reference of

the judgment of the Apex Court and different High Court has been given and would be referred while analyzing the arguments.

The learned counsel for the respondents submitted that as against the loan of Rs. 22,842 Crores taken by ABG Shipyard and given to its

associated companies and others, the attachment of properties could be only for a sum of Rs. 2747 Crores. The loan was siphoned by the ABG

Shipyard Ltd. and Subsidiary Companies and it cannot be without committing a crime in organized manner. It is a crime against the country and the

public which cannot be ignored rather the Tribunal should take a serious view on it.

It is submitted that the Appellant has not approached the Hon'ble Tribunal with clean hands. The Appellant is the wife of the CFO of ABG

Shipyard Ltd and the beneficiary of the diverted funds from ABG Shipyard. The conduct of the Appellant herself during the course of the proceeding

under the provisions of PMLA, 2002 has been such that she has evaded the proceedings before the Respondent at a previous juncture by escaping

abroad after the search proceedings and if the possession of the property is not taken immediately, she may try to dispose of the same and escape

with the sale proceeds to a foreign country and may never return, thereby, frustrating the present proceedings. Hence, in view of A, these exigent

circumstances, the present application deserves to be dismissed.

It is submitted that Aries Management Services Pvt. Ltd had acquired the entire property at Serial No. 1 i.e. Siddhi Apartment, Opp. IDBI Bank,

Near Siddhivinayak Temple, Shankar Ghanekar Marg, Prabhadevi, Mumbai using funds diverted from ABGSL. Funds were transferred from ABGSL

during the period from Dec, 2007 to Feb, 2008. These funds have been utilized by Aries Management Services Pvt. Ltd for acquisition of the entire

property of Siddhi Apartment comprising 14 flats. Out of these 14 flats at Siddhi Apartment acquired by Aries Management Service Pvt. Ltd using

funds of ABGSL, one flat i.e. Flat No. 6B, Siddhi Apartment, Opp. IDBI Bank, Near Siddhivinayak Temple, FP No. 967 of TPS IV, Mahim Shankar

Ganekar Marg, Prabhadevi, Mumbai -25 has been transferred to Mrs. Savita Datar (present appellant) & her husband Mr. Dhananjay Datar.

It is submitted that by utilizing funds of ABG Group Company, Savita Dhananjay Datar had acquired property from Aries Management Service Pvt.

Ltd, which was even originally acquired using funds from ABG Shipyard Ltd. Total consideration amounting to Rs. 4.5 Crore for purchase of property

were made from the account (s) of Savita Dhananjay Datar (3.25 Crore) and Sanyog Infrastructure Pvt. Ltd. (1.25 Crore). Savita Datar was an

authorized signatory in the bank account of Sanyog Infrastructure Pvt Ltd. and her husband was director of the company.

It is submitted that apart from the funds diverted from ABG Shipyard Ltd to Smt. Savita Datar for purchase of property i.e. Flat No. 6B, 6th Floor,

Siddhi Apartment, Prabhadevi, Mumbai -25 (as discussed in para above), Savita Dhananjay Datar, had received funds from related entities of ABG

Shipyard Ltd., which had no major source of revenue and had no business activity. The account No. 015801002431 of Savita Dhananjay Datar, had

many credit entries from companies like ABG Cement Holdco Pvt. Ltd. (holding company of ABG Cement Ltd.) & Ashmit Mercantile Pvt. Ltd.

(having no business activity) amounting to Rs. 35 Lakh. Here, it is necessary to mention that Mrs. Savita Dhananjay Datar was never associated with

any of ABG Group Companies though her bank accounts were used for diversion of funds from ABGSL. Mrs. Savita Datar also received funds from

Mahavir Distributors Pvt. Ltd. through Sanyukta Trading Pvt. Ltd. and Sanyog Infrastructure Pvt. Ltd. all amounting to Rs. 93.10 Lakh. Further, A/c

No. 001101511606 of Mr. Dhananjay Datar, CFO of ABG Group had many credit entries amounting to Rs. 1.06 Crore from companies with which he

was never associated in any capacity e.g. Ashmit Mercantile Pvt. Ltd., Mahavir Distributors Pvt. Ltd., One Ocean Shipping Pvt. Ltd. and ABGFPSO

Pvt. Ltd. Further, most of these credits have been made after the association of Dhananjay Datar ended with ABG Group i.e., September, 2015.

However, the purpose of these credit entries remained unknown as Mr. Dhananjay Datar neither appeared for his statement and nor supplied any

clarification in this regard.

It is submitted that Mrs. Savita Datar was authorized signatory of Sanyog Infrastructure Pvt. Ltd. and Dhananjay Datar was director of the company.

This company controlled and managed by Savita Datar and Dhananjay Datar had received multiple credit entries from group companies of ABG

Shipyard Ltd. i.e., Sanyukta Shipping & Logistics Private Limited (ABGFPSO Pvt. Ltd.) (Rs. 10 Lakh), Onaway Industries Pvt. Ltd. (Rs. 25 Lakh),

Aries Management Pvt. Ltd (Rs. 1 Crore), altogether aggregating to Rs. 1.35 Crore. That, total amount of credits into the accounts of Mrs. Savita

DhananjayDatar, Mr. DhananjayDatar&Sanyog Infrastructure Pvt. Ltd. has come out to be Rs. 3,69,10,000/- from group companies of ABG

Shipyard Ltd. and the same has been squandered by the duo to meet their personal expenses. It is further submitted that during the statement

recorded u/s 50 of PMLA, directors of various group companies of ABG Shipyard Ltd. have admitted that Ashmit Mercantile Pvt. Ltd, Mahavir

Distributors Pvt. Ltd., One Ocean Shipping Pvt. Ltd. &Sanyukta Shipping & Logistics Private Limited had no business activity, therefore, the funds

transferred to these companies were transferred without any rationale and just to create the circular/ paper transactions. The prayer is not to pass an

interim order.

The learned counsel for the respondent further submitted that to carve out an exception to invoke Section 8 (4) of the Act of 2002, reasons, are,

not, required, to, be, given, in, the, notice, itself, rather it can be given when a challenge to the notice is made. Section 8 (4) of the Act

of 2002 and rule 5 (2) of the rules of 2013 does not mandate disclosure of reasons in writing as otherwise such mandate exists for causing a notice for

provisional attachment and other actions under the Act of 2002. The Apex Court in the case of Vijay MadanlalChoudhary (Supra) has not issued

direction or mandated the department to give exceptional reason in the notice for causing possession of the property rather what has been directed that

an action for possession should be an exception and not as a rule. Exceptional reasons have been given to contest the application. Therefore, a

challenge to the eviction notice on the ground that it does not disclose reasons is not tenable.

The Apex Court in the case of Vijay MadanlalChoudhary (Supra) has referred to the possession at the stage of confiscation of the property but in

para 304 to 307 itself, it has permitted eviction after confirmation of the provisional attachment order but not as a rule but as an exception. There

exists some contradiction in the judgment of the Apex Court and in any case what should prevail is the statutory provisions having been held to be

constitutionally valid. Statutory provision cannot be re-written by a court and thereby it is absolutely erroneous on the part of the appellant to submit

that notice for eviction can be caused only at the stage of confiscation rather if that stage comes, the property immediately vests in the government. In

view of the above, the respondents were justified to cause a notice for eviction.

We have considered the rival submissions of the parties and scanned the matter carefully. Before dealing with rival arguments raised by the counsel

for the parties, it would be relevant to refer to the history of the case which revolves not only against the appellant but ABG Shipyard Ltd. and its

associate companies. The facts in this regard have been given by Adjudicating Authority and are referred hereunder:

Subsequent to the receipt of the complaint the reasons u/s 8 (1) of PMLA 2002 was recorded by the Adjudicating Authority for the purpose

of issue of notice U/s 8 (1) as under: -

1) The Original Complaint (OC) 1824/2022 and its annexures/ RUD were received on 20.10.2022, with reference to the Deputy

Director, Enforcement Directorate, Ahmedabad's Provisional Attachment Order No. 08/2022 dated 21.09.2022. Following a review of the

aforementioned documents and the exhibits thereto, the pertinent facts are briefly stated below for the purpose of issuing a notice under

section 8 (1) of the Act.

2) On the basis of the written complaint dated 25.08.2020 filed by Shri Balaji Singh Samanta, DGM, State Bank of India, SAM Branch, The

Arcade, II Floor, World Trade Centre, Cuffe Parade, Colaba, Central Bureau of Investigation, AC-V, New Delhi registered an FIR no.

RC2232022A0002 dated 07.02.2022 for commission of offence under Sections 409, 420, r/w Section 120-B of IPC, 1860 and Section 13(2)

read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against:

(a) ABG Shipyard Limited. (ABGSL)

(b) Shri Rishi Kamlesh Agarwal, Chairman, ABGSL

(c) Shri Santhanam Muthuswamy, Director, ABGSL

(d) Shri Ashwini Kumar, Director, ABGSL

(e) Shri Sushil Kumar Agarwal, Director, ABGSL

(f) Shri Ravi Vimal Nevatia, Director, ABGSL

(g) ABG International Limited and

(h) Unknown Public Servant (s) and Private Person (s).

3) FIR dated 07.02.2022 alleged inter-alia, commission of offences of criminal conspiracy, cheating, criminal breach of trust, abuse of

official position, thereby causing wrongful loss to the tune of Rs. 22,842/- Crores to the consortium of banks, comprising State Bank of

India, erstwhile State Bank of Patiala (presently State Bank of India), Commercial Finance Branch, New Delhi, erstwhile State Bank of

Travancore (presently State Bank of India), Commercial Branch, New Delhi etc. let by ICICI Bank.

4) The complaint dated 25.08.2020 filed by SBI alleged that the accused person has colluded together to commit illicit activities including



diversion of funds, misappropriation and used the funds for purposes other than the purposes for which the funds were released by the

bank.

5) The bank accounts of ABGSL were maintained at SBI, Overseas Branch, Mumbai, where the fraud occurred, the fraud had also taken

place at the branches of erstwhile State Bank of Patiala, Commercial Finance Branch, New Delhi and State Bank of Travancore,

Commercial Branch, New Delhi. The fraud perpetrated by the accused came to light consequent to the Forensic Audit conducted for the

period from April, 2012 to July, 2017 by Ernst and Young LLP (E&Y) vide its report dated 18.01.2019.

6) It has been placed on record that ABGSL was incorporated in the year 1985 under the name Magdalla Shipyard at Magdalla, Surat

(Guj.). Later in 1994, name of the company was changed to ABG Shipyard Limited. Mr. Rishi Kamlesh Agarwal was the Managing Director

and Chairman of ABGSL was the flagship company of ABG Group and engaged in the business of ship building and ship repair. ABG

Group, promoted by Shri Rishi Kamlesh Agarwal was the major player in the Indian Shipbuilding Industry. ABGSL's Shipyard were

located at Dahej and Surat, Gujarat. ABG International Ltd. (AIPL) was the holding company of ABG Shipyard Ltd.

7) The complainant has brought on record the contents of the investigation conducted and statement u/s 50 (2) & 50 (3) of the PMLA as

mentioned on pages 34-240 of the OC, elaborating the modus operandi of the generation of the proceeds of crime and deployment thereof.

8) Investigation under PMLA has revealed that ABG Shipyard Ltd., its Chairman and Managing Director, Mr. Rishi Kamlesh Agarwal, ABG

International Pvt. Ltd. in connivance with others, have misappropriated the credit facilities availed from the consortium of banks led by

ICICI Bank and utilized the funds for the purposes other than its actual cause that eventually caused monetary loss to the tune of Rs.

22,842/- Crores to the consortium. ABGSL, its promoter/directors and other associated entities. Persons have colluded together and diverted

the funds availed from credit facilities to various paper entities incorporated in India and abroad in the garb of loans, bogus purchase

orders, overseas investments in Singapore, Mauritius, Cyprus, Dubai and Norway etc. ABGSL floated various group companies like Gold

Croft Property Pvt. Ltd., G.C. Property Pvt. Ltd., Aries Management Pvt. Ltd., Somerset Estate Pvt. Ltd., Tirupati Landmark Pvt. Ltd., ABG

Power Pvt. Ltd. A & Agbros Leasing and Finance Pvt. Ltd., which were having no business activities and the same had been incorporated

only for purpose of acquiring immovable properties through the funds diverted from ABG Shipyard Ltd and projecting those immovable

assets as untainted properties.

9) It has been further revealed that ABGSL in collusion with others have resorted to illicit practices of inflating the books of accounts of

ABGSL by way of making circular transaction among its various group companies and other related entities so as to hoodwink the creditors

and to enjoy enhanced credit limits from consortium of banks. Part of funds availed from credit facilities was transferred and diverted to

various Singapore based entities like ABG Singapore Pvt. Ltd as a loan of USD 71 million and the fund was further invested in Standard

Chartered Trust (Cayman), however, out of USD 71 Million, USD 28.1 Million was brought back to India but for the remaining USD 43

million, ABGSL acquired preference shares of ABG Singapore Pvt. Ltd., however, it failed to prove the genuineness of this transaction,

therefore, the end use of this amount remains unknown.

10) Further, as per the statement of Mr. MuthuswamySanthanam, it is revealed that though he had been appointed director in various

Singapore based entities/ companies of ABGSL but he was not able to explain the business activities carried out by those Singapore based

entities/ companies. Mr. Rishi Kamlesh Agarwal, Mr. DhananjayDatar and Mr. Balaji Gopal was the key persons controlling the affairs

such Singapore based companies.

11) Further, the POC here, which were the loan amount received from the consortium of banks led by ICICI bank were used to purchase

properties, providing loans/ advances/ guarantees to subsidiary companies in India as well as abroad, acquiring equity shares in overseas

entities for making investments in mutual funds, payment to related parties which were not the actual purpose for which the loan facilities

were advanced to ABGSL and hence, these investments/ loans/ advances/ guarantees/ payments are nothing but Proceeds of Crime within

the meaning of section 2 (1) (u) of PMLA, 2002.

12) Hence, the complainant has reasons to believe that attached properties were Proceeds of Crime and were liable for attachment in view

of second proviso of Section 5 of PMLA, 2002. As the Charge Sheet in the present case is yet to be filed by the LEA and the schedule of

Attached Properties covers various assets including bank accounts and immovable properties which could easily change hands, and if not

attached, the same were likely to be concealed, transferred or dealt with any manner which may result in frustrating any proceedings

relating to confiscation of POO.

13) The complainant, having described the nature of offence and their relation to the movable/ immovable properties attached, issued

Provisional Attachment Order No. 08/2022 dated 21.09.2022 under sub section (1) of section 5 for provisional attachment in the form of

movable/immovable properties to the tune of Rs. 27,47,69,57,435/- (Rupees Two Thousand Seven Hundred Forty-Seven Crores Sixty-Nine

Lakhs Fifty-Seven Hundred Forty Seven Crores Sixty-Nine Lakhs Fifty-Seven Thousand Four Hundred and Thirty-Five Only) acquired

by/under the possession of the defendant as mentioned on pages 9 -15 of the OC.

The reference to facts has been given to show the background of the case. The facts would otherwise be considered while hearing and deciding the

appeal. The respondents have shown a case of exceptional nature for invoking Section 8 (4) of the Act of 2002. It is pursuant to the judgment of Apex

Court in the case of Vijay Madanlal Choudhary (Supra) wherein it was held that possession of the attached property should not be taken by invoking

Section 8 (4) of the Act of 2002 as a rule but can be as an exception. The detailed reasons to show exception has been given by the respondents,

though contested by the appellant.

It is stated by respondent that the ABG Shipyard had taken loan of Rs. 22,842 Crores from the consortium banks by resorting to the illicit practices of

inflating the books of accounts of the company by way of making circular transaction among the various groups of companies and other related

entities so as to hoodwink. It was to enjoy enhanced credit limit from consortium of banks. The part of funds availed from credit facilities were

transferred and diverted to various Singapore based entities like ABG Singapore Pvt. Ltd. apart from others from whom substantial amount remain

unpaid. The fund was even diverted to Standard Chartered Trust (Cayman) and many other companies located at different countries like Singapore,

Mauritius, Dubai etc. The appellant is one among them, as it purchased the property from Aries Management Service Pvt. The Aries Management

Pvt. Ltd., Somerset State Pvt. Ltd., Thirupati Landmark Pvt. Ltd., ABG Power Pvt. Ltd., Agbros Leasing and Finance Pvt. Ltd. were having no

business activities. They were incorporated only for the purpose of acquiring immovable properties through the funds diverted by ABG Shipyard Ltd.

Those, immovable assets were projected to be untainted properties though are out of the proceeds of crime. The other properties have been attached

for value thereof. It is shown that ABG Shipyard Ltd. obtained huge amount of Rs. 22,842 Crores from the consortium of banks by manipulating the

books of account and diverted the said funds in an illegal manner and thereby a serious fraud was committed on the banks. It is on the public and the

country because such a transaction affects the economy of the country.

We would go into details as to how the crime was organised while deciding the appeal but have touched upon the facts to find out a prima facie case of

organised crime. The facts on record show that huge amount was rotated in an illegal manner through associated companies in an organised manner

and thereby even the properties worth of the equivalent amount of proceeds of crime could not be attached rather value of attached properties after

the order of Adjudicating Authority is only of a sum of Rs. 2041 Crores out of the properties worth of Rs. 2747 Crores, so attached as against the

proceeds of crime of Rs. 22482 Cr. The Crime was committed by the ABG Shipyard Ltd. and associated companies in connivance with the officers

of the bank and, therefore, a case was registered even for an offence under Prevention of Corruption Act also. Thus, it is a serious case where

properties of equivalent value to the proceeds of crime could not be attached.

In view of the above, a case has been made out to show exception for taking possession of the properties in question. The crime against the country

cannot be viewed casually rather seriousness to it has to be attached. It cannot be taken to be a case of simple nature or a theft of trivial amount but is

an offence committed after proper planning with a deliberate design regardless of the consequence on the society at large. The Apex Court has taken

a serious view on similar cases.

¶ Para 11 & 12 of the judgment of the Apex Court in the case of Central Bureau of Investigation vs. Maninder Singh Criminal Appeal I no.

1496/2009 dated 28.08.2015 are quoted:

¶ 11. The inherent power of the High court under Section 482 Cr.P.C. should be sparingly used. Only when the Court comes to the

conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court

would quash the proceedings. In economic offences Court must not only keep in view that money has been paid to the bank which has been

defrauded but also the society at large. It is not a case of simple assault or a theft of a trivial amount; but the offence with which we are

concerned is as well planned and was committed with a deliberate design with an eye of personal profit regardless of consequence to the

society at large. To quash the proceeding merely on the ground that the accused has settled the amount with the bank would be misplaced

sympathy. If the prosecution against the economic offenders are not allowed to continue, the entire community is aggrieved.

12. In *Ā, recentĀ, decisionĀ, inĀ, Vikram Anantrai Doshi (Supra)* this Court distinguished *Nikhil MerchantĀ,–s case* and *Narendra Lal*

*JainĀ,–s case* where the compromise was a part of the decree of the court and by which the parties withdrew all allegations against each

other. After referring to various case laws under subject in *VikramAnantraiDoshiĀ,–s case*, this Court observed that cheating by bank

exposit fiscal impurity and such financial fraud is an offence against society at large in para (23), this Court held as under: -

Ā,–Ā“23. Be it stated, that availing of money from a nationalized bank in the manner, as alleged by the investigating agency, vividly exposit

fiscal impurity and, in a way, financial fraud. The modus operandi as narrated in the charge sheet cannot be put in the compartment of an

individual or personal wrong. It is a social wrong and it has immense societal impact. It is an accepted principle of handling of finance that

whenever there is manipulation and cleverly conceived contrivance to avail of these kind of benefitĀ,–s it cannot be regarded as a case

having overwhelmingly and predominating of civil character. The ultimate victim is the collective. It creates a hazard in the financial interest

of the society. The gravity of the offence creates a dent in the economic spine of the nation. The cleverness which has been skilfully

contrived, if the allegations are true, has a serious consequence. A crime of this nature, in our view, would definitely fall in the category of

offences which travel far ahead of personal or private wrong. It has the potentiality to usher in economic crisis. Its implications have its

own seriousness, for it creates a concavity in the solemnity that it expected in financial transactions. It is not such a case where one can pay

the amount and obtain a Ā,–Ā“ no due certificateĀ,– and enjoy the benefit of quashing of the criminal proceedings on the hypostasis that

nothing more remains to be done The collective interest of which the court is the guardian cannot be a silent or a mute spectator to allow the

proceedings to be withdrawn, or for that matter yield to the ingenuous dexterity of the accused persons to invoke the jurisdiction under

Article 226 of the Constitution or under section 482 of the Code and quash the proceedings. It is not legally permissible. The Court is the

proceeding. It is not legally permissible. The Court is expected to be on guard to these kinds of adroit moves. The High Court, we humbly

remind, should have dealt with the matter keeping in mind that in these kind of litigations the accused when perceives a tiny gleam of

success, readily invokes the inherent jurisdiction for quashing of the criminal proceedings. The courtĀ,–s principal duty, at that juncture,

should be to scan the entire facts to find out the thrust of allegations and the crux of the settlement. It is the experience of the Judge comes

to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. As we find in the case at

hand the learned Single Judge has not taken pains to scrutinize the entire conspectus of facts in proper perspective and quashed the

criminal proceeding. The said quashment neither helps to secure the ends of justice nor does it prevent the abuse of the process of the court

nor can it be also said that as there is a settlement no evidence will come on record and there will be remote chance of conviction. Such a

finding in our view would be difficult to record. Be that as it may, the fact remains that the social interest would be on peril and the

prosecuting agency, in these circumstances, cannot be treated as an alien to the whole case. Ergo, we have no other option but to hold that

the order of the High Court is wholly indefensible.

The similar view was taken by the Apex Court in the case of Rohit Tandon vs. Enforcement Directorate Criminal Appeal No. 1878/2017 decided on

10th November, 2017 Para 18 of the said judgement is quoted hereunder:

“18. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public

funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing

serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and

also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds

of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the Act of 2002.

The judgements referred to above were on similar facts. It is the submission of the respondent that conspiracies involving huge loss to the public funds

need to be viewed seriously as they affect the economy of the country. In this case, the amount involved and the manner in which it was siphoned

off by the group of companies and, thereupon, projected, it, to be, untainted, money, shows, their intention to commit the crime in an

organised manner.

The respondents have shown even involvement of the appellant and her husband in the organized crime. The appellant is none else but the wife of the

CFO of ABG Shipyard Ltd. and the beneficiary of diverted funds from ABG Shipyard Ltd. The detail facts, in that, regard, has, been,

recorded, while, referring, to, the arguments to the learned counsel for the Respondents. It is a fact that the Apartment in Siddhi Apartment

was purchased from Aries Management, Services, Pvt. Ltd., which, company, had, taken, the funds from ABG Shipyard Ltd. The

total consideration amount was of Rs. 4.5 Crores for purchase of the property. Savita, Dhananjay Datar (Appellant) contributed Rs. 3.25 Crores

and remaining 1.25 came from Sanyog Infrastructure Pvt. Ltd. The appellant Savita Dhananjay Datar was authorized signatory of Sanyog

Infrastructure Pvt. Ltd. to which her husband was the director. The details as to how the proceeds of crime were used for purchase of the property at

Siddhi Apartment and even the involvement of the appellant in money laundering has been given in the proceeding para while recording the arguments

of the counsel for the Respondents. We do not wish to repeat the same facts which are otherwise sufficient to prima facie show as to how the

appellant was involved in the transactions for routing the amount of loan taken by ABG Shipyard. A detail reference would be given while hearing and

deciding the appeal finally. In view of the fact that it is a case of organized crime, the possession notice cannot be said to have caused as a rule but as

an exception. It has been explained by the respondent and we are convinced with the aforesaid.

The notice for possession has been questioned by the appellant even on the ground that no reason has been given therein, whereas administrative

order should disclose the reason. The reference of the judgement of Apex Court in the case of OPTO Circuits (India) Ltd. v. Axis Bank, (2021) 6

SCC 707 has been given where it was held that the reasons for passing of an order shall be given therein and cannot be substituted: Para 12 of the

said judgment is quoted thus: -

“12. The action sought to be sustained should be with reference to the contents of the impugned order/communication and the same cannot be

justified by improving the same through the contention raised in the objection statement or affidavit filed before the Court. This has been succinctly laid

down by this Court in Mohinder Singh Gill v/ Chief Election Commr. [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] as follows :

(SCC p. 417, para 8)

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be

judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit otherwise. Otherwise, an order

bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

We may here draw attention to the observations of Bose, J. In Gordhandas Bhanji, 1951 SCC 1088] : (SCC p. 1095, para 9)

“9. Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given

by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public

authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must

be construed objectively with reference to the language used in the order itself.”

We find that the order impugned therein, was, containing reasons but additional reasons were given before the court for the first

time. Such a practice was not accepted. The case in hand is not, of, similar, nature. In this, case, there, is, no, order, under

challenge but a notice under Section 8 (4) of the Act of 2002 which does not direct for giving reasons in the notice for possession. In fact, the

provision aforesaid allow possession of the property forthwith on passing order of confirmation of provisional attachment order. Section 8 (4) is quoted

hereunder for ready reference:

“4. Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the

Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or

frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation

shall have the same effect as if the property had been taken possession of.”

The stage for taking possession comes forthwith on the confirmation of order of provisional attachment and it does not mandate assignment of reasons

therein for causing possession. The notice otherwise does not require a reply from the effected person so as to assign the reasons for its reply. The

appellants have failed to make a differentiation between the administrative order and the notice under the statute not requiring assessment of reasons

for taking possession. In fact, it is in view of the judgement of Apex Court in the case of Vijay Madanlal Choudhary (Supra) that provision of Section 8

(4) cannot be invoked as a course but as an exception. The said judgment does not mandate assignment of the reason in the notice itself. What has

been ruled is that the possession should not be sought as a course but as an exception. In such circumstance notice was not required to contain the

reason for taking possession of the attached property. The reasons can be supplied by the respondents as and when the notice is questioned by the

aggrieved party to show that Section 8 (4) of the Act has not been invoked as a rule but as an exception.



At this stage, it may be clarified that depending on the nature of the administrative order, reasons may require to be assigned therein but not for a

notice requiring no mandate under the law for assignment of reasons. The respondents have otherwise made out a case to fall in the category of

exception to invoke Section 8 (4). Thus, we are unable to accept the ground urged by the appellant to question the validity of the notice under Section

8 (4) of the Act.

The learned counsel for the appellant has even made reference of the judgment of the High Court propounding a ratio on Section 8 (4) of the Act of

2002 after referring to the judgement of the Apex Court in the case of Vijay Madanlal Choudhary (Supra).

Those judgments are not required to be discussed as they have followed the judgment of the Apex Court, in the case of Vijay

Madanlal Choudhary (Supra). It is however necessary to clarify as to whether the possession can be caused before confiscation of the property. The

counsel for the appellant has given reference (to Para 304 to 307 of the judgement in the case of Vijay Madanlal Choudhary and are quoted here

under:

“304. The other grievance of the petitioners is in reference to the stipulation in sub-section (4) of Section 8 providing for taking

possession of the property. This provision ought to be invoked only in exceptional situation keeping in mind the peculiar facts of the case.

In that, merely because the provisional attachment order passed under Section 5 (1) is confirmed, it does not follow that the property stands

confiscated; and until an order of confiscation is formally passed, there is no reason to hasten the process of taking possession of such

property. The principle set out in Section 5 (4) of the 2002 Act needs to be extended even after confirmation of provisional attachment order

until a formal confiscation order is passed. Section 5(4) clearly states that nothing in Section 5 including the order of provisional

attachment shall prevent the person interested in the enjoyment of immovable property attached under sub-section (1) from such enjoyment.

The need to take possession of the attached property would arise only for giving effect to the order of confiscation. This is also because

sub-section (6) of Section 8 postulates that where on conclusion of a trial under the 2002 Act which obviously in respect of offence of

money-laundering, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in

money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the

person entitled to receive it. Once the possession of the property is taken in terms of sub-section (4) and the finding in favour of the person

is rendered by the Special Court thereafter and during the interregnum if the property changes hands and title vest in some third party, it

would result in civil consequences even to third party. That is certainly avoidable unless it is absolutely necessary in the peculiar facts of a

particular case so as to invoke the option available under sub-section (4) of Section.

305. Indisputably, statutory Rules have been framed by the Central Government in exercise of powers under Section 73 of the 2002 Act

regarding the manner of taking possession of attached or frozen properties confirmed by the Adjudicating Authority in 2013, and also

regarding restoration of confiscated property in 2019. Suffice it to observe that direction under Section 8 (4) for taking possession of the

property in question before a formal order of confiscation is passed merely on the basis of confirmation of provisional attachment order,

should be an exception and not a rule. That issue will have to be considered on case-to-case basis. Upon such harmonious construction of

the relevant provisions, it is not possible to countenance challenge to the validity of sub-section (4) of Section 8 of the 2002 Act.

306. The learned counsel appearing for the Union of India, had invited our attention to the recommendations made by FATF in 2003 and

2012 to justify the provision under consideration. The fact that non-conviction based confiscation model is permissible, it does not warrant

an extreme and drastic action of physical dispossession of the person from the property in every case "which can be industrial/

commercial/ business and also residential property, until a formal order of confiscation is passed under Section 8 (5) or 8 (7) of the 2002

Act. As demonstrated earlier, it is possible that the Special Court in the trial concerning money-laundering offence may eventually decide

the issue in favour of the person in possession of the property as not being proceeds of crime or for any other valid ground. Before such

order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession

of the property held by such person. Further, it would served no purpose by hastening the process of taking possession of the property and

then returning the same back to the same person at a late date pursuant to the order passed by the Court of competent jurisdiction.

Moreover, for the view taken by us while interpreting Section 3 of the 2002 Act regarding the offence of money-laundering, it can

proceed only if it is established that the person has directly or indirectly derived or obtained proceeds of crime as a result of criminal

activity to or relatable to a scheduled offence or was involved in any process or activity connected with proceeds of crime.

307. It is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of his acquittal or

discharge in connection with the scheduled offence. Resultantly, we would sum up by observing that the provision in the form of Section 8

(4) can be resorted to only by way of an exception and not as a rule. The analogy drawn by the Union of India on the basis of decisions of

this Court in Divisional Forest Officer v. G.V. Sudhakar Rao, Bishwanath Bhattarcharya, Yogendra Kumar Jaiswal v. State of Bihar, will be

of no avail in the context of the scheme of attachment, confiscation and vesting of proceeds of crime in the Central Government provided

for in the 2002 Act.

The paras quoted above refer to possession at the time confiscation of the property. It, however, allows possession after confirmation of the

provisional attachment order but not as a rule but as an exception. In general practice, possession of the property may be taken at the stage of

confiscation but in the case of exceptional nature, it can be after confirmation of provisional attachment order. If we go strictly by the Section 8 (4),

the right of the respondents to invoke aforesaid provision comes in existence forthwith upon confirmation of the provisional attachment order. The

statutory provision cannot be ignored by us and even by the court. In fact, possession at the stage of confiscation of the property remains automatic

because on confiscation of the property, it vests in the government and would be along with the possession and therefore, Section 8 (4) was brought on

the statute to allow possession of the property even prior to confiscation and the said provision has been upheld by Apex Court where its constitutional

validity was challenged. Once the provision is held to be constitutionally valid, a view contrary or offending the statutory provision cannot be taken.

Thus, we are not in agreement with the appellant that possession of the property can be taken only on confiscation. It would be rewriting Section 8 (4)

of the Act though possession after confirmation of the provisional attachment order would not be as a rule but an exception.

The issue now remains as to what would be an exception.

The learned counsel for the appellant has given reference to the judgment of the Apex Court in the case of M/s Union of India & Anr. v/s. M/s

Ganpati Dealcom Pvt. Ltd. dated 28.08.2022 in Civil Appeal No. 5783/2022 where certain cases of exceptional nature have been illustrated. It is in a

case where the proceeds of crime is arising out of, Terrorist, or, Drugs, cartel, apart from, the, case, of organised crime. The

relevant para of the said judgment is quoted hereunder:

17.27. In *Vijay Madanlal Choudhary & Ors v. Union of India*, SLP (Civ.) No. 4634 of 2014 and others, this Court dealt with confiscation

proceedings under Section 8 of the Prevention of Money Laundering Act, 2002 (PMLA) and limited the application of Section 8 (4)

of PMLA concerning interim possession by authority before conclusion of final trial to exceptional cases. The Court distinguished the

earlier cases in view of the unique scheme under the impugned legislation therein. Having perused the said judgment, we are of the opinion

that the aforesaid ratio requires further expounding in an appropriate case, without which, much scope is left for arbitrary application.

17.28. From the above discussion, it is manifest that the Courts have read down the provisions of civil forfeiture to be dependent on the

underlying criminal prosecution to temper the harsh consequences envisaged under such provisions. No doubt, such reading down was

mandated to ameliorate harsh consequences of confiscatory laws which otherwise would have allowed the State agencies to take over the

property without seriously pursuing the criminal prosecutions. At this stage, we can only recommend that the utility of independent

provisions of forfeiture, distinct from criminal prosecution, needs to be utilized in a proportional manner, looking at the gravity of the

offence. Few examples which may pass the muster of proportionality for having such stringent civil forfeiture, may relate to crimes involving

terrorist activities, drug cartels or organized criminal activities. As we have discussed, the application of such a provision to numerous other

offences which are not of such grave severity, would be of serious risk of being disproportionate, if procedures independent of criminal

prosecution are prescribed. We may note that the proportionality of separate confiscation procedure prescribed under 2016 Act, has not

been argued herein. Accordingly, we leave the aforesaid question of law open.

The judgement (Supra) refers to exception to invoke Section 8(4) and the present case falls in one of the category carved out by the Apex Court. The

present case is shown to be a case of organised crime, we find that exception exists to invoke Section 8 (4) to take possession of the property. Thus,

for all the reasons given above, we are unable to accept the arguments raised by the learned counsel for the appellant.

In view of the discussion made above, we do not find a case in favour of the appellant for grant of interim order and accordingly application is

dismissed.

Let the appeal be listed on 08th November, 2023.