

C. Mackertich Ltd. Vs Custodian

Court: Calcutta High Court

Date of Decision: July 19, 2002

Acts Referred: Constitution of India, 1950 " Article 12, 226

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 " Section 13, 3, 3(2), 3(3), 3(5)

Citation: (2003) 46 SCL 220

Hon'ble Judges: Ashok Kumar Mathur, C.J; Jayanta Kumar Biswas, J

Bench: Division Bench

Advocate: S.N. Mookherjee, Sanjib Banerjee, D. Basak and Deepak Jain, for the Appellant; A. Subba Rao, M.K. Lodh, J. Sen, Mrinal Kanti Kundu, Asish Kumar Guha, H.K. Mitter and Soumen Sen, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Ashok Kumar Mathur, CJ

1. Both these appeals arise out of judgment and order dated 29-1-2002 whereby the learned Single Judge has dismissed the writ petition and held

that the petitioner has an alternative remedy under the statute by approaching the Special Court constituted under Special Court (Trial of Offences

Relating to Transactions in Securities) Act, 1992 (hereinafter referred to as Act of 1992). It was further held that the Stock Exchange is a "State"

within the meaning of Article 12 of the Constitution, therefore, the writ petition is maintainable. Aggrieved against this order dated 29-1-2002

appeal has been filed by the writ petitioner as well as by the Calcutta Stock Exchange Association Limited. Hence, both the appeals are disposed

of by a common order.

2. Brief facts which are necessary for disposal of these appeals are that the writ petitioners, M/s. C. Mackertich Limited, a company incorporated

under the Companies Act, 1956, and one Vijay Kumar Kothari, Director and shareholder of the petitioner-company, challenged various

communications dated 20-11-2001, 26-11-2001 and orders dated 5th and 10-12-2001 by filing the present writ petition. The notification dated

20-11-2001 was issued by Mr. D.K. Tyagi, Custodian appointed u/s 3(1) of the Act of 1992 and by that notification one Sri Ajay Kayan, figured

as proprietor of M/s. C. Mackertich and Co., was notified and all his assets and properties were attached. The relevant notification reads as under

:

Notification

New Delhi, the 20-11-2001

No. Custodian/13/2001P2

I, D.K. Tyagi, appointed as Custodian u/s 3(1) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992

(hereinafter referred to as the Act) vide Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) No. F.4/3/

94-SCS/VIG dated 4-9-2001, having been satisfied on information received that the persons/entities named below had been involved in offences

relating to transactions in securities after the 1st day of April, 1991 and on and before 6-6-1992, hereby notify them in exercise of powers vested

in me by Section 3(2) of the Act :

1. Shri Ajay Kayan

(a) Proprietor, M/s. C. Mackcrtich and Co.,

Stock Brokers, Calcutta.

(b) **

2. and 3.**

All properties, movable or immovable or both, belonging to the persons/ entities notified herein, shall stand simultaneously attached by virtue of the

provisions of Section 3(3) of the Act.

3. A public notice was also issued on said 20-11-2001. It was published in Calcutta edition of the Telegraph, it reads as under :

Office of the Custodian Special Court

(Trial of Offences Relating to

Transaction in Securities) Act, 1992

Bank of Baroda Bhawan, 3rd Floor

Parliament Street, New Delhi-110 001

Public Notice

All concerned are hereby informed that the Custodian appointed under the Special Court (Trial of Offences Relating to Transactions in Securities)

Act, 1992 (hereinafter referred to as the Act) notified in the Gazette of India-Extraordinary - Notification No. Custodian/10/2001, Custodian/

11/2001, Custodian/12/2001, Custodian/13/2001 and Custodian/14/ 2001 dated 20-11 -2001 the names of the following persons/entities u/s

3(3) of the Act.

1. Sri Jaideep Jagdish Pathak,

S/o. Shri Jagdish Pathak,

R/o. 56-A, Surya Kiran, 5th Floor,

Bhaldas Maganlal Path,

A.K. Marg, Bombay-400 007.

2. Sri G.N. Hegde,

S/o Shri Nirappa Hegde,

R/o Garden Queen, 3rd Floor,

16th Road, Santa Cruz (West),

Bombay-400 055.

3. Shri Kishore Narottamdas Amerchand,

Share and Stock Broker, Mumbai,

R/o 3, Matruchhaya, 70, Marine Drive,

Mumbai-400 020.

4. M/s. Fairgrowth Investments Ltd. (FGIL),

130-132, Greater Western Building,

Apollo Street, Mumbai.

5. Shri Haresh K. Dalal,

(a) Proprietor

M/s. H.K. Dalal Stock Broker, Mumbai.

(b) No. A-11, Motibug,

Slong Road, Mumbai-400 022.

6. Shri Pravin Kantilal Vakil,

(a) Proprietor, M/s. Motiram Vakil,

Stock Broker, Bombay Stock Exchange,

737, Totunda Bldgs., Dalal Street,

Mumbai-400 023.

(b) Share Broker,

214, Panjarpol, Mumbai-400 004.

7. Sri Ajay Kayan

(a) Proprietor, M/s. C. Meckertich and Co.,

Stock Brokers, Calcutta.

(b) S/o Shri G.S. Kayan,

9/2, Hunger Ford Street, Calcutta-700 017.

8. Shri Shyam Sunder Dalmia,

S/o R.P. Dalmia

Securities Broker, 10/4B, Lala Lajpat Sarani,

Calcutta-700 020.

9. M/s. Dhyan Investments and Trading Co. Ltd.,

10th Floor, Tulsani Chambers,

222, Nariman Point, Mumbai-400 021.

10. M/s. Rahul and Co.,

Share and Stock Broker,

3B, Lalbazar Street, 3rd Floor,

Sir R.N. Mukherjee Road, Calcutta-700 001.

11. Shri Gourishankar Kayan,

S/o Late Shri Chhedilal Kayan

(a) Prop. M/s. Rahul and Co.,

3B, Lalbazar Street, 3rd Floor,

Sir R.N. Mukherjee Road, Calcutta-700 001.

(b) R/o (Present and Permanent),

9/2, Hunger Ford Street,

Calcutta-700 017.

2. All concerned may note that in accordance with the provisions of Section 3(3) of the Act, notwithstanding anything contained in the Code of

Criminal Procedure, 1973 and any other law for the time being in force, on and from the date of the aforesaid notification, any property, movable

or immovable of both belonging to any notified persons/en titles shall stand attached simultaneously with issue of the notification.

3. Further, u/s 3(4) of the Act, the property attached u/s 3(3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

4. u/s 4(1) of the Act, if the Custodian is satisfied, after such inquiry as he may think fit, that any contract or agreement entered into at any time

after the 1 st day of April, 1991 and on and before the 6-6-1992. In relation to any property of persons/entities notified u/s 3(2) has been entered

into fraudulently or to defeat the provisions of the Act, he may cancel such contract or agreement and on such cancellation such property stand

attached under the Act.

5. The provisions of the Act, as per Section 13 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the

time being in force or in any instrument having effect by virtue of any law, other than the Act, or in any decree or order of any Court, Tribunal or

other authority.

6. In view of the above, all companies, firms, banks, individuals and all other concerned are informed by this notice that transactions of any kind

relating to the attached properties of the notified persons/entities is not permissible without the direction of the Hon"ble Special Court, Mumbai. It

is further, reiterated that no movable attached property of the notified persons/entities be removed or taken possession of without the consent of

the Custodian.

7. In the light of the above, all those who have had dealings or are presently dealing with such attached properties including Banks, Financial

Institutions, Mutual Funds, etc. are hereby called upon to intimate to the Custodian at the addresses mentioned below the details of such properties

including all movable or immovable or both, bank accounts, fixed deposits, shares, scripts, stocks, bonds, debentures/units of the Unit Trust of

India or any other Mutual Fund or other marketable securities, vehicles, tenancy rights, etc. as on the date of notification held by them in the names

of the notified persons/entities, individually and/or jointly severally or on behalf of the notified persons/entities, as also details and value of shares,

bonds, etc. held as collateral securities furnished by the notified persons/entities.

8. Addresses to which information/particulars are required to be sent.

At New Delhi : Shri M. Simon John, Officer on Special Duty, Office of the Custodian, Bank of Baroda Bhawan, 3rd Floor, 18, Parliament Street,

New Delhi.

At Mumbai : Shri M.P. Purushu, Officer on Special Duty, Office of the Custodian, Nariman Bhawan, 9th Floor, 227, Vinay K. Shah Marg,

Nariman Point, Mumbai 400 021.

New Delhi Sd/- D.K. Tyagi

20-11-2001 Custodian.

4. A copy of the notification was sent to various Stock Exchanges by the Officer on Special Duty for their information and necessary action.

Immediately thereafter, on 26-11-2001 the Stock Exchange. Mumbai deactivated the BOLT terminal (Broker"s online terminal) of the petitioner-

company and informed them that the Exchange was in process of seeking certain clarification from the Custodian and till such clarification is

received from the Custodian the BOLT terminal of the petitioner-company shall remain deactivated. It was alleged that the Stock Exchange,

Mumbai advised the petitioner-company to obtain resignation of its Director, Ajay Kayan from the petitioner-company. The General Manager of

the petitioner-company protested this action by his communication dated 4-12-2001 alleging that the Stock Exchange, Mumbai has acted with

undue haste in deactivating the BOLT terminal of the petitioner-company. It was pointed out that the petitioner-company is a separate and distinct

legal entity in the eye of law and cannot be made to suffer because one of the Directors has been notified under the Act of 1992. Similarly, by letter

dated 5-12-2001 the National Stock Exchange of India Limited wrote to the petitioner-company about the order of the custodian and the

National Stock Exchange also decided to withdraw the trading facility of the petitioner-company on capital market segment of the National Stock

Exchange till further notice. The petitioner-company protested this action of the National Stock Exchange. On 26-11-2001 the representative of

the petitioner-company called on the office of the Executive Director of respondent No. 3 when he was informed that the notification dated 20-11-

2001 has been forwarded to their office by a fax message dated 22-11-2001. During the said meeting the petitioner-company's representative

was informed by the Executive Director of respondent No. 3 to stop share transactions and since then their trading activities have been stopped.

The petitioner-company on 6-12-2001 protested against their withdrawal of trading facility by the respondent No. 3. They received the reply from

respondent No. 3 that this facility has been withdrawn because of notification wherein Shri Ajay Kayan has been declared as "notified person" as

proprietor of C. Mackertich and Co. and they have also informed that the implications of subsequent conversion of the proprietorship concern to a

corporate identity under the Companies Act, 1956 with Sri Ajay Kayan as a qualifying director/ shareholder is being examined by their solicitors

and they will revert back to the petitioner-company after the necessary legal advice is tendered by the solicitors. Meanwhile, it appears that they

also have deactivated the terminal of the petitioner-company. Hence all these communications were challenged by the petitioner-company by filing

the present writ petition. The plea of the petitioner-company was that the company is incorporated under the provisions of the Companies Act,

1956 and just because one of the Board of Directors, namely; Ajay Kayan, has been notified by the Custodian, on that count the company cannot

be prevented from undertaking its business activities. Therefore, in sum, the total challenge was that the action of the National Stock Exchange as

well as the Stock Exchanges, Mumbai and Calcutta preventing the petitioner-company from its trading activities is arbitrary and illegal.

5. The writ petition was contested without filing any affidavit-in-opposition by the respondents, as recorded by the learned Single Judge in his

order and it is also admitted before us by the respondents that they did not file any affidavit-in-opposition and argued the matter on the question of

principles. The Custodian was represented by Mr. Subba Rao and he took the position that this Court should not interfere in its extraordinary

jurisdiction in a matter which is aftermath of a great scandal popularly known as "scam" and Shri Ajay Kayan, Director of the petitioner-company

has been notified under the Act of 1992, It was also contended that, since the order has been passed by the Custodian in exercise of powers

vested under the Act of 1992 and in pursuance of that all Stock Exchanges all over the country have passed consequential orders, therefore, the

remedy for the petitioner-company is to approach the Special Court constituted under the Act of 1992 for redressal of its grievance. The stand of

the stock exchanges including that of Calcutta Stock Exchange was that they have only complied with the order of the Custodian received by them

on fax on 22-11 -2001. The fax message dated 22-11 -2001 reads as under :

No. 1472/CUS/Notification/92(2) Vol. II

Dated : 22-11-2001

To

The Executive Director,

Calcutta Stock Exchange,

Calcutta.

Sub : Notification of persons/entities under the Special Court (TORTS) Act, 1992

The undersigned is directed to send herewith a copy of Gazette of India Extraordinary No. 302 dated 20-11-2001 publishing therein Custodian's

Notification Nos. Custodian/10-14-2001 dated 20-11-2001 notifying therein, in all 11 (eleven) persons/entities for your kind information and

necessary action.

(M. Simon John)

Officer on Special Duty

6. In pursuance of the aforesaid communication, received from the office of the Custodian of the Special Court constituted under the Act of 1992

for information and necessary action, the Calcutta Stock Exchange complied with the order by deactivating the BOLT terminal of the petitioner-

company. No order was passed by the Calcutta Stock Exchange. In this background the learned Single Judge decided the matter and in course of

deciding the matter the learned Single Judge posed a question that whether the stock exchange was a "State" within the meaning of Article 12 of

the Constitution or not.

7. However, before we proceed to decide all the questions which have been raised it will be relevant to mention some of the provisions which have

a bearing on the subject. The action, which has given rise to this litigation, has been initiated under the Act of 1992, Therefore, we may briefly deal

with the provisions of the Act of 1992. The Act of 1992 was enacted because of certain offences relating to transactions in securities. The

statement of objects and reasons of the Act of 1992 reads as under:

In the course of the investigations by the Reserve Bank of India, large scale irregularities and malpractices were noticed in transactions in both the

Government and other securities, indulged in by some brokers in collusion with the employees of various financial institutions. The said irregularities

and malpractices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers.

2. To deal with the situation and in particular to ensure the speedy recovery of the huge amount involved, to punish the guilty and restore

confidence in an (sic) maintain the basic integrity and credibility of the banks and financial institutions the Special Court (Trial of Offences Relating

to Transactions in Securities) Ordinance, 1992 was promulgated on the 6-6-1992. The Ordinance provides for the establishment of a Special

Court with a sitting Judge of a High Court for speedy trial of offences relating to transactions in securities and disposal of properties attached. It

also provides for appointment of one or more Custodian for attaching the property of the offenders with a view to prevent diversion of such

properties by the offenders.

3. The Bill seeks to replace the said Ordinance.

8. As per the statement of objects and reasons it appears that certain irregularities and malpractices were brought to the notice of the Government

that some brokers in collusion with the employees of various financial institutions indulged in malpractice, which led to diversion of funds from

banks and financial institutions to the individual account of certain brokers. Therefore, in order to deal with such kind of malpractices indulged in by

certain brokers this Act of 1992 was enacted and for speedy recovery of the amounts and trial of offences relating to fraudulent transactions the

Special Court came to be established. As per provisions of the Act of 1992, the Central Government can appoint one or more Custodian for

attaching the property of the offenders with a view to prevent diversion of such properties by such offenders. In terms of Section 2(b) "Custodian"

means the Custodian appointed under subsection (1) of Section 3. The word "Securities" has been defined in Section 2(c), which provides as

under :

(c) "securities" includes-

(i) shares, scripts, stocks, bonds, debentures, debenture stock, units of the Unit Trust of India or any other mutual fund or other marketable

securities of a like nature in or of any incorporated company, or other body corporate;

(ii) Government securities; and

(iii) rights or interests in securities;"".

9. Section 2(d) provides that "Special Court" means the Special Court established under Sub-section (1) of Section 5. Section 3 which lays down,

the provision for appointment and functions of the Custodian, which has a relevant bearing on the subject, provides as under :

3. Appointment and functions of Custodian.--(1) The Central Government may appoint one or more Custodians as it may deem fit for the

purposes of this Act.

(2) The Custodian may, on being satisfied on information received that any person has been involved in any offence relating to transactions in

securities after the 1st day of April, 1991, and on and before the 6-6-1992 notify the name of such person in the Official Gazette.

(3) Notwithstanding anything contained in the Code, and any other law for the time being in force on and from the date of notification under Sub-

section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall stand attached

simultaneously with the issue of the notification.

(4) The property attached under Sub-section (3) shall be dealt with by the Custodian in such manner as the Special Court may direct.

(5) The Custodian may take assistance of any person while exercising his powers or for discharging his duties under this section and Section 4.

10. According to Section 3(2) of the Custodian is satisfied on an information received that any person is involved in any offence relating to

transaction in securities after the 1st day of April, 1991 and on and before 6-6-1992 then the name of such person shall be notified in the Official

Gazette, Section 3(3) says that notwithstanding anything contained in the Code and any other law for the time being in force, on and from the date

of notification under Sub-section (2), any property, movable or immovable, or both, belonging to any person notified under that sub-section shall

stand attached simultaneously with the issue of the notification. Therefore, according to Section 3(3), which starts with a non-obstante clause, the

property movable or immovable or both of such notified person shall stand attached from the date when the person is notified in the Official

Gazette. Therefore, the effect of Section 3(3) is that the moment a person is notified by the Custodian that he has been involved in offences relating

to securities during the period from 1-4-1991 to 6-6-1992 and his name has been notified in the Official Gazette all his properties movable or

immovable shall stand attached. The effect of this attachment will be that this property shall be dealt with by the Custodian in such manner as the

Special Court may direct. Therefore, the property of the offender who has been notified shall stand attached with the Custodian and that property

will be dealt with by the Custodian under the orders of the Special Court. Section 3(5) says that the Custodian may take assistance of any person

while exercising his powers for discharging his duties under this section. Section 4(1) says that if the Custodian is satisfied, after such inquiry as he

may think fit, that any contract or agreement entered into at any time after the 1st day of April, 1991 and on and before 6-6-1992 in relation to any

property of the person notified under Sub-section (2) of Section 3 has been entered into fraudulently or to defeat the provisions of the Act, he may

cancel such contract or agreement and on such cancellation such property shall stand attached under this Act. But there is a rider that before

cancellation of such contract or agreement the concerned parties will have to be given a reasonable opportunity of being heard. In Section 4(2)

aggrieved party has been given a remedy of filing a petition objecting to the notification issued u/s 3(2) or any cancellation made u/s 4(1) or any

other order made by the Custodian in exercise of powers conferred on him under sections 3 and 4 within a period of 30 days to the Special Court

appointed by the President. Section 5(1) lays down that the Central Government shall, by notification in the Official Gazette, establish the Special

Court. Section 5(2) says that the Special Court shall consist of one or more sitting Judges of the High Court nominated by the Chief Justice of the

High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India. In absence

of any Judge in Special Court the Chief Justice of the concerned High Court has been given power to nominate any Judge to discharge the function

of the Special Court. Section 5A deals with distribution of cases amongst the Judges of Special Court. Section 6 says that the Special Court shall

take cognizance of or try such cases as are instituted before it or transferred to it. Section 7 deals with the jurisdiction of the Special Court. It says

that notwithstanding anything contained in any other law, in prosecution in respect of any other law, any prosecution in respect of any offence

referred to in Sub-section (2) of Section 3 shall be instituted only in the Special Court and any prosecution in respect of such offence pending in

any Court shall stand transferred to the Special Court. Section 8 confers special jurisdiction on the Special Court that in case of joint trials, the

Special Court will have the jurisdiction to try any person concerned either as principal, conspirator or abettor and all other offences and accused

persons as can be jointly tried therewith at one trial in accordance with the Code. Section 9 deals with procedure and powers of Special Court,

which says that the Special Court shall have all power of CPC as far as they are not inconsistent with the provisions of this Act and the Special

Court shall be deemed to be a Court of Session. The Special Court will be competent to convict and pass sentence authorised by law. It also gives

the latitude to the Special Court that it can adopt such procedure as it deem fit consistent with the principles of natural justice. Section 9A deals

with jurisdiction, powers, authority and procedure of Special Court in civil matters. Section 9A has been inserted to this Act by the Special Court

(Trial of Offences Relating to Transactions in Securities) Amendment Act (24 of 1994). By virtue of Section 9A the Special Court has also been

conferred full powers of a Civil Court in relation to any property stood attached u/s 3(3). According to Sub-section (2) of Section 9A every suit,

claim or other legal proceeding pending before any Court immediately before the commencement of the Amendment Act of 1994 being a suit,

claim or proceeding, the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the

jurisdiction of the Special Court under Sub-section (1) of Section 9A, shall stand transferred on such commencement to the Special Court and the

Special Court may, on receipt of the records of such suit, claim or other legal proceedings, proceed to deal with it, so far as may be, in the same

manner as a suit, claim or other legal proceeding from the stage which was reached before such transfer or from any earlier stage or de novo as the

Special Court may deem fit. Sub-section (3) of Section 9A says that from the date when Section 9A came into force by the Amendment Act of

1994 no Court, other than the Special Court shall have, or be entitled to exercise, any jurisdiction, power or authority in relation to any matter or

claim referred to in Sub-section (1) of Section 9A. Sub-section (4) of Section 9A says that the Special Court shall not be bound by the procedure

laid down by the Code of Civil Procedure, it shall be guided by the principles of natural justice, and subject to the other provisions of this Act and

of any rules, the Special Court shall have power to regulate its own procedure. Sub-section (5) of Section 9A says that the Special Court shall

have all powers vested in a Civil Court under the CPC like; issuance of summons, discovery and production of documents, receiving evidence on

affidavits, and other relevant provisions have been enumerated in Sub-section (5) of Section 9A. Section 9B says that the Special Court shall have

the jurisdiction and powers of a Court conferred under the Arbitration Act, 1940. Section 10 deals with the appeal against the order passed by the

Special Court. It says that appeal under this section shall be preferred within a period of 30 days from the date of any judgment, sentence or

orders of the Special Court to the Supreme Court on facts as well as on law and no other appeal or revision shall lie before any other Civil Court.

Section 11 deals with discharge of liabilities and power to punish. Section 11A deals with the power to punish for contempt. Section 12 deals with

protection of action taken in good faith. Section 13 says that this Act has an overriding effect. It says that this Act shall have an overriding effect

notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of

any law, other than this Act, or in any decree or order of any Court, Tribunal or any other authority.

11. Therefore, the Act of 1992 has an overriding effect against all other provisions of law. In the scheme of things, only question fell for

consideration of the learned Single Judge was that whether the order passed by the Calcutta, Mumbai and National Stock Exchanges in

deactivating the terminal of the petitioner-company was justified or not. If we examine the action of the Calcutta Stock Exchange with reference to

the provisions of the Act, it only transpires that the Calcutta Stock Exchange has done nothing but complied with the order of the Custodian. It is

an admitted fact that the incumbent is a notified person by the notification dated 20-11-2001 which was published in the Gazette of India

(Extraordinary) on 20-11-2001. Once Sri Ajay Kayan has been notified as notified person and by virtue of that notification all the properties

movable or immovable or both belonging to Ajay Kayan stood attached in terms of Section 3(3) of the Act of 1992, the Calcutta Stock Exchange

had no other option but to comply with this notification. This communication was sent to the Calcutta Stock Exchange as Ajay Kayan was doing

business as broker in Calcutta Stock Exchange. He was also doing business in Mumbai and National Stock Exchanges and a copy of this

notification was also endorsed to them. By virtue of this notification issued to the Calcutta Stock Exchange, Calcutta Stock Exchange deactivated

the terminal of the petitioner-company in compliance with the order passed by the Custodian. As mentioned above, Section 3(5) lays down that

the Custodian can take assistance of any other person while exercising his powers or for discharging his duties under this section and u/s 4. When

this fax message was sent to the Calcutta Stock Exchange for information and necessary action, as reproduced above, the Calcutta Stock

Exchange had no option but to deactivate the terminal of the petitioner-company.

12. This was a limited question before the learned Single Judge. The plea taken by the petitioner-company was that Sri Ajay Kayan was one of the

shareholders of the petitioner-company (though he resigned later on) and his holding which was raised to 97.94 per cent was subsequently brought

down to 68 per cent. But the fact remains that Sri Ajay Kayan was practically the owner of this company, though in order to escape the clutches

of law he has resigned as one of the Directors. But the fact remains that the petitioner-company was started by Sri Ajay Kayan in 1994 and it is

still a debatable question that whether this company was established by Sri Kayan from the tainted money earned by him during 1-4-1991 to 6-6-

1992. This matter is yet to be decided by the competent forum. But the petitioner-company rushed to file this writ petition and challenged the

action of the Calcutta Stock Exchange as well as National and Mumbai Stock Exchanges. It is not the action of the Calcutta Stock Exchange

which is sought to be challenged but in fact what is sought to be challenged is the order passed by the Custodian. Therefore, the view taken by the

learned Single Judge to the extent that this cannot be interfered in extraordinary writ jurisdiction is well-founded. It is a question which is yet to be

decided by the Special Court that whether all the money for establishing the petitioner-company was tainted money or the petitioner-company

which has been established by Sri Kayan was from any other source which does not have the tinge of that tainted money. This question could not

have been decided in this proceeding. Moreso, by virtue of the notification dated 20-11-2001 and the public notice issued on 24-11-2001 all the

properties of all the persons who were notified and that of Sri Ajay Kayan stood attached. The 20th November, 2001 notification clearly says that

all the properties movable or immovable or both belonging to persons/entities shall stand attached by virtue of Section 3(3) of the Act of 1992 and

similarly in the public notification dated 24-11-2001 the same was reiterated for notice of all concerned that from the date of the aforesaid

notification any property movable or immovable or both belonging to the notified persons/entities shall stand attached and it shall only be dealt with

by the Custodian in such manner as the Special Court may direct. It was also made clear in the public notice dated 24-11-2001 that the provisions

of the Act of 1992 shall have overriding effect on all other laws and all the companies and firms were directed to take notice that the property

belonging to the notified persons/entities stood attached and it is not permissible to have any transaction of any kind relating to the attached

properties of the notified persons/entities except with the direction of the Hon"ble Special Court, Mumbai. It was also mentioned in the public

notice that all those who have ad dealings with such attached property of the notified persons/entities shall intimate to the Custodian of the details of

such properties. Therefore, in view of these facts the assets and properties of Sri Ajay Kayan, who has floated the petitioner-company and is

having 68 per cent of the shareholding, was attached and if the petitioner-company seeks any remedy the remedy lies in the Special Court,

Mumbai, which alone has jurisdiction to provide remedy and that Court is held by no less than a sitting Judge of High Court. Therefore, this Court

has no jurisdiction to entertain the matter which is within the exclusive jurisdiction of the Special Court, Mumbai. Therefore, Mr. Subba Rao was

right in his submission that there was no occasion for the learned Single Judge to have unnecessarily entered into the question whether the Calcutta

Stock Exchange is a "State" within the meaning of Article 12 of the Constitution or not. In fact, we are also of the opinion that this question does

not directly fall for determination that whether the Calcutta Stock Exchange is a "State" within the meaning to Article 12 of the Constitution or not.

If we probe deep into the matter we find that in substance what the petitioner-company wants to challenge is the basic order of the Custodian, as

the Calcutta Stock Exchange has only acted in terms of the direction issued by the Custodian. Therefore, it is only an incidental action, the basic

challenge is the notification notifying Sri Kayan as a notified person u/s 3(2) of the Act of 1992. No executing agency who has implemented the

order can be held responsible. The Calcutta Stock Exchange was only an executing agency and since the said Sri Kayan was notified person and

he floated this company in 1994, all his assets stood attached, therefore, it deactivated the terminal of the petitioner-company preventing it from

doing any trading activity in Calcutta Stock Exchange. Therefore, it is not an action of the Calcutta Stock Exchange which is under challenge. The

Calcutta Stock Exchange has only acted as per the direction given by the Custodian as executing agency and if the petitioner-company has any

grievance against the order passed by the Custodian then it has remedy under the Act of 1992. Even in a civil matter if a decree is passed and in

prudence of that decree the executing Court attaches the property of a third person, he thinks that this property is not covered by the decree then

the remedy is to approach that very Civil Court which has passed the decree for modification and the remedy does not lie in the executing Court.

Similar is the position here. The Calcutta Stock Exchange like an executing Court has complied with the order passed by the Custodian and if the

petitioner-company has any grievance against the order passed by the Custodian, then the remedy lies before the Special Court and not u/s 226.

The Act of 1992 is a complete Court in itself and all the remedies have been provided in that Code and it has prohibited the jurisdiction of all other

Civil Courts. Therefore, it is a sound exercise of jurisdiction by the learned Single Judge who has directed the parties to resort to the remedy

provided under the Act of 1992. Therefore, we are of the opinion that we need not dilate ourselves on the question that whether the Calcutta

Stock Exchange is a "State" within the meaning of Article 12 of the Constitution or not in these proceeding for the reason that no detailed materials

have been placed before the Court by the Calcutta Stock Exchange, as no affidavit-in-opposition has been filed by them. Therefore, there was no

sufficient material before the learned Single Judge to come to the conclusion that the Calcutta Stock Exchange is a "State" within the meaning of

Article 12 of the Constitution nor was it necessary in this case. As such the view taken by the learned Single Judge on this question cannot be

sustained as the controversy involved in the matter cannot be decided without going into the detail facts.

13. Therefore, we find no merit in the appeal filed by the petitioner-company and the same is dismissed. The appeal filed by the Calcutta Stock

Exchange Association Limited is allowed and the view taken by the learned Single Judge that the Calcutta Stock Exchange is a "State" within the

meaning of Article 12 of the Constitution is set aside. There will be no order as to costs.

Jayanta Kumar Biswas, J.

14.1 agree.

Order accordingly.