

(2023) 05 DEL CK 0091

In the Delhi High Court

Case No : Civil Writ Petition No. 4866 Of 2023

Manglam Infrabuild LLP

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision : 11-05-2023

Acts Referred:

Prevention of Money Laundering Act, 2002 — Section 5, 17(1A), 54

Citation : (2023) 05 DEL CK 0091

Hon'ble Judges : Prathiba M. Singh J

Bench : Single Bench

Advocate : Dhruv Chaudhry, Ravi Prakash

Final Decision : Disposed Of

Judgement

Prathiba M. Singh J

1. This hearing has been done through hybrid mode.

2. The Petitioner- Mangalam Infrabuild LLP has challenged a communication dated 26th July, 2019 'purportedly' issued by the Respondent No. 1-Enforcement Directorate as per the provisions of Section 54 of the Prevention of Money Laundering Act, 2002 ('PMLA Act') under the signatures of the Assistant Director, Mr. Hemant. Vide the said communication, directions have been issued that certain properties in TDI City, Kundli-Sonipat cannot be permitted to be sold, transferred or leased out without prior permission of the Respondent No. 1-Enforcement Directorate.

3. The impugned communication is as follows:

Sir,

1. This Directorate is conducting investigations against the captioned company and its directors and other under the provision of the Prevention of Money Laundering Act (PMLA), 2002.

2. investigation conducted so far, revealed that the suspected persons had invested the part of proceeds of crime, in acquiring/purchasing of following properties at TDI City, Kundli, Sonipat.

SL No.

Details of the property

1

A4-703, TDI City, Kundli, Sonipat (Flat)

2

D4-803, TDI City, Kundli, Sonipat (Flat)

3

I-522 TDI City, Kundli, Sonipat of 250 Sq. Yards (Plot)

4

B-B37/25 TDI City, Kundli, Sonipat (Plot)

5

B-B37/26 TDI City, Kundli, Sonipat (Plot)

3. In the view of above, it is requested that the name of person/entity, on whose name above said properties situated at TDI City, Kundli, Sonipat are presently registered be intimated to this office along with certified copy of respective sale/purchase deeds.

4. It is also requested that details of properties, falling in your jurisdiction, owned partially or wholly in the name of Persons as per Annexure 'A' may also be provided.

5. It is also requested that further sale/transfer/lease of the aforesaid properties or properties found in the name of persons mentioned at Annexure A may not be allowed until and unless prior permission is obtained from this office.

6. this letter is issued under Section 54 of the Prevention of Money Laundering Act, 2002."

4. The challenge in this case is that this order/communication could not have been passed under the PMLA Act without a proper notice being given and Provisional Attachment being directed.

5. Vide order dated 28th April 2023, this Court directed as under:

"On the last date of hearing, instructions were sought by Mr. Ravi Prakash, Id. CGSC as to the nature of this communication dated 26th July 2019, which was purportedly issued by the Respondent No. 1-Enforcement Directorate. He informs the Court that he seeks one more week to revert with instructions."

6. Today, an email has been placed before this Court which has been sent by Mr. Ankur Tiwari, Assistant Director, Enforcement Directorate wherein it is recorded as under :-

"1.1. This Directorate vide email dated 26.07.2019 to Ravinder Taneja of TDI group requested to not allow the further sale/transfer/lease of 5 properties of TDI group stating that "It is also requested that further sale/transfer/lease of the aforesaid properties or properties found in the name of the persons mentioned at Annexure A may not be allowed until and unless prior permission is obtained from this office". This letter is issued under Section 54 of Prevention of Money Laundering Act, 2002.

2.2. During the course of Investigation, 3 properties (1 flat belonging to Sh. Kapil Jain and one flat & one plot belonging to Mrs. Nidhi Jain) among the 5 properties were attached via PAO 03/2020 dated 17.03.2020. The remaining 2 plots belong to Petitioner i.e Manglam Infrabuild LLP.

3.3. The present petition has been filed challenging the communication vide email dated 26.07.2019, that was sent to a real estate developer TDI Group, directing to not carry out any further sale/transfer/lessing of the 5 properties without the prior permission of the Directorate. That subsequently, 3 out of 5 properties were attached vide PAO no. 03/2020 dated 17.03.2020 in the subject case and the remaining 2 properties are being owned by the Petitioner Manglam Infrabuild LLP.

4.4. That the subject matter of the petition is that the communication dated 26.07.2019 evidently issued under section 54 of PMLA, effectively freezes the said 2 properties and the same has not been done in accordance with the provisions of PMLA i.e. section 5 or section 17(1A). Also, the Hon'ble Delhi High Court has raised a similar query and the same reflects in the Order dated 28.04.2023.

5.5. In light of the above, I have been directed to convey to your goodself that this Directorate shall be withdrawing the communication dated 26.07.2019 issued to the TDI Group, barring any further sale/transfer/leasing of the two properties which are the subject matter of this Writ Petition. The HON'ble High Court may be apprised of the same on the next date of hearing i.e. 11.05.2023."

7. In terms of the above email, Mr. Ravi Prakash, Id. CGSC submits that the communication dated 28th July, 2019 which is challenged before this Court is being withdrawn by the Enforcement Directorate.

8. This Court notes with some concern that the impugned email/communication has been written to the promoters of the TDI in respect of the properties which are not even subject matter of any investigation, and that too by Assistant Director, Mr. Hemant, who is not authorised under the PMLA to pass such communications. Though the email is now sought to be withdrawn, it is clear that such an email ought not to have been written in the first place.

9. The higher authorities including the Director, Enforcement Directorate shall be informed of this impugned email which was written in the present case, so that appropriate instructions and directions could be given to the concerned officials of the Enforcement Directorate.

10. The communication dated 26th July, 2019 having been withdrawn, no further orders are called for in this writ petition.

11. The Enforcement Directorate shall inform the recipients of the impugned email dated 26th July, 2019, about the withdrawal of the same along with a copy of this order.

12. The petition with all pending applications, if any, is disposed of.