

(2014) 10 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21124 of 2014

P. Trivikrama Prasad

APPELLANT

Vs

Enforcement Directorate

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1988 — Section 48(1)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Prevention of Food Adulteration Act, 1954 — Section 17(1), 5
Prevention of Money-laundering Act, 2002 — Section 17, 17(1)(c), 18, 18(1), 2(1)(na)

Citation : (2015) 1 ALD 513 : (2015) 1 ALD(Cri) 287 : (2015) 2 ALT 602 :
(2015) 3 ALT(Cri) 6 : (2016) 1 RCR(Criminal) 499

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : D.V. Sitarama Murthy, Senior Counsel, Advocate for the Appellant;
P.S.P. Suresh Kumar, Standing Counsel and B. Narayana Reddy, Assistant
Solicitor General, Advocate for the Respondent

Judgement

P. Naveen Rao, J.—In exercise of power vested by Section 5(1) of Prevention of Money Laundering Act, 2002 (Act 15 of 2010), (for short the Act), the Joint Director, Directorate of Enforcement, Ministry of Finance, Government of India, passed order of provisional attachment of the properties mentioned in para-29 of the order. One of the properties attached is 73,99,99,994 shares of Rs. 2/- each of M/s. Nava Bharat Energy India Limited (NBEIL) for value of Rs. 147,99,99,988/-. The order of provisional attachment is assailed in this writ petition by the Nava Bharat Projects Limited, Nava Bharat Energy India Limited and Sri P. Trivikrama Prasad, Director on Board of Nava Bharat Projects Limited and Nava Bharat Energy India Limited.

2. Nava Bharat Power Private Limited (NPPL) was promoted by Sri P. Trivikrama Prasad and Sri Y. Harichandra Prasad with equal shares. To achieve primary

objective to generate power, the company entered into power purchase agreement with Power Trading Corporation (PTC) in January, 2006 and entered into memorandum of understanding with Government of Odisha. The Government of Odisha promised to provide 42 cusecs of water from river Brahmani. NPPL promised to supply 25% of the power generated to the State of Odisha. Mahanadi Coal Fields Limited issued letter of assurance for supply of 2.404 MTPA of F grade coal. NPPL signed power purchase agreement with GRIDCO, where under GRIDCO agreed to purchase 25% of the power generated by NPPL.

3. On 13.11.2006, advertisement was published on behalf of the Government of India, inviting companies to apply for allotment of coal blocks for captive utilization of power plants. On the same day, NPPL entered into memorandum of understanding with Globeleq Singapore Private Limited. On 23.11.2006, Odisha Government recommended name of NPPL for allocation of coal blocks for its power projects. By order dated 17.01.2008, the Ministry of Coal, Government of India, conveyed decision to allocate the coal blocks in Rampia and Dipside locations. Insofar as Rampia is concerned, petitioner is part of consortium of six companies. On 19.02.2008, joint venture company i.e., Rampia Coalmine Energy Private Limited was incorporated by the six consortium companies. In July, 2008, ESSAR Power Limited agreed to purchase entire share holding of NPPL for a consideration of Rs. 169 crores.

4. Basing on a reference from the Central Vigilance Commission on allegations of corruption in the matter of allocation of coal blocks to private companies, the Central Bureau of Investigation registered FIR in RC 219/2012 E 0011 on 03.09.2012 under sections 120B and 420 of Indian Penal Code, Section 13(2) read with 13(1)(d) of Prevention of Corruption Act. On completion of investigation, CBI filed charge sheet No. 1 dated 10.03.2014. Sri Y. Harish Chandra Prasad, P. Trivikrama Prasad and Nava Bharat Power Private Limited are accused Nos. 1, 2 and 3 respectively.

5. Consequent to the registration of the crime by CBI, the Directorate of Enforcement issued ECIR/02/HYZO/2013, dated 22.07.2014 and initiated investigation under the Prevention of Money Laundering Act, 2002 (Act, 2002) against M/s. NPPL and others. The Enforcement Directorate conducted detailed investigation. Having found in the investigation that the NPPL gave a mis-declaration regarding their net worth with an intention to get allotment of coal blocks, that after allotment of coal blocks, accused Nos. 1 and 2 have offered to sell their equity on the same day i.e., 12.07.2010, that NPPL has not made any investment on plant and machinery and that value of tangible assets was very insignificant prior to allotment of coal blocks to get such high premium and no plant and machinery was installed in the project and no commercial production of electricity generated and, therefore, there was no consideration of the net worth of the company to get such high premium and thus the premium price was only on account of coal blocks allotment and such allotment was made based on

misrepresentation of facts by NPPL.

6. Having regard to the analysis of the investigation, the Enforcement Directorate believed that promoters of M/s. NPPL have mis-declared their net worth for allotment of coal blocks and soon after the allotment of coal blocks, they have sold their equity at high premium and such high premium is nothing but proceeds of crime, knowingly became party and are actually involved in possessing, projecting and claiming that as untainted property and hence guilty of offence of Money Laundering in terms of Section 3 of the Act, 2002. Enforcement Directorate had reason to believe that the accused are in possession of proceeds of crime amounting to Rs. 186.11 crores in the form of shares, wind mills and lands and these properties are involved in money laundering. Thus, in exercise of power vested in the Enforcement Directorate under Section 5(1) of Act, 2002, order of provisional attachment of assets mentioned therein is passed in proceedings No. ECIR/02/HYZO/2013, dated 22.07.2014. This order of provisional attachment is under challenge in this writ petition.

7. Heard learned senior counsel Sri D.V. Sitarama Murthy for petitioners and standing counsel Sri P.S.P. Suresh Kumar for Enforcement Directorate.

8. Learned senior counsel contended that the provisional attachment is ex facie illegal and in excess of jurisdiction vested in the Joint Director of Enforcement Directorate. Unless the mandate of section 5(1)(b) of Act, is complied, no provisional attachment can be made. Learned senior counsel submitted that as per Section 5(1) authority must have reason to believe and the reason for such belief to be recorded in writing on being satisfied that the person is in possession of the proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime and only on such compliance an order of provisional attachment can be made. This is a mandatory compliance and is intended to prevent illegal exercise of power by the competent authority.

9. These parameters mandated by section 5(1) are not complied with in this case. The order of provisional attachment does not say that the petitioners were intending to transfer or dealt with in any manner resulting in frustrating the proceedings relating to confiscation of such proceeds of crime. What is attached is shares of the petitioner company, which shares can be sold only through Stock Exchange and there cannot be a surreptitious dealing in transfer of such shares to frustrate the proceedings relating to confiscation of alleged proceeds of crime. He, therefore, submits that the ingredients of Section 5(1) are not attracted. Though the order runs into 36 pages it does not satisfy the basic requirement to exercise such power under Section 5(1) of the Act.

10. Learned senior counsel further contended that all the steps taken by the petitioners are in public domain. The amount of sale consideration and tax paid thereafter and the balance amount invested in the power plant of third petitioner

are all disclosed to the stock exchange. No transfer of amount is made by the 1st and 2nd petitioners and 3rd petitioner is a subsidiary of the 2nd petitioner and the amounts invested are in substance belong to the 2nd petitioner only. Petitioners have not committed any illegalities in securing the coal blocks. Due procedure was followed in securing the coal blocks. By the time coal blocks were allotted to NPPL, NPPL had all necessary sanctions, permissions for setting up the power plant, environmental clearance, in principle land allotment, forest clearances, in principle water allocation, long term purchase agreements etc. As on 12.7.2010, no prospecting licence was issued and in normal course, even if all clearances are available, exploration of coal itself would start only after 5 to 8 years. The valuation given by ESSAR Private Limited is based on transfer and permissions given for the project undertaken by NPPL, but not for coal blocks which was not even granted any prospecting licence and there was no mining lease agreement executed as on the said date.

11. Learned senior counsel further contended that though the share capital of NPPL was Rs. 20 crores in the year 2008, but the potential value of the company was high because the company secured permissions and licences in due compliance of all statutory requirements. ESSAR Power Limited was looking for a readymade company to venture into power generation and was attracted to NPPL since the company has secured all required formalities which are time consuming and require lot of paper work. Learned senior counsel further contended that even after the sale to ESSAR Power Limited, there was no change in the end user insofar as coal blocks is concerned.

12. Learned senior counsel further contended that Nava Bharat group is well established group. It had six foreign subsidiaries and six Indian subsidiaries. They are executing huge infrastructure and power projects globally and have good reputation and financial credibility with the banks and financial institutions. On account of the arbitrary decision taken by the Enforcement Directorate, the reputation of the company has drastically affected. Its share prices crashed. The initiation of such proceedings and attachment of shares is affecting several projects on hand; that banks have developed apprehension on the capability of the Nava Bharat Group and, therefore, started insisting for additional securities and guarantees. There was no necessity for attachment. The very purpose of attachment is to ensure that the alleged proceeds of crime are not removed before the trial is concluded. In the instant case, the fixed assets of the Group are more than 300 crores and, therefore, sufficient amount of security is available for the Enforcement Directorate to take appropriate steps.

13. Learned senior counsel submitted that against orders passed under section 5(1), no remedy is created by the Act, 2002 and, therefore, petitioners have no other alternative remedy, except invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Learned senior counsel therefore urged that provisional attachment order be set aside.

14. Learned senior counsel placed reliance on the following decisions:

For the proposition on the relevancy of words reason to believe, learned senior counsel for the petitioner relied on following decisions.

- i) The Commissioner of Sales Tax U.P. v. M/s. Bhagwan Industries (P) Ltd.,
- ii) Sheo Nath Singh v. Appellate Assistant Commissioner of Income Tax, Calcutta.
- iii) M/s. Satyam Computer Services Limited v. Directorate of Enforcement and Ors. in W.P. No. 37487 of 2012.

For the proposition that quasi-judicial order must contain reason to be recorded in writing, he relied on the following decisions.

- i) T.R. Thandur v. Union of India & Ors.
- ii) Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors.
- iii) Jasbir Singh v. Vipin Kumar Jaggi and Ors.
- iv) Msr. Maneka Gandhi v. Union of India and Anr.

Learned senior counsel by relying on the decision in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors., contended the order must contain the reason in support of the decision and those reasons cannot be supplemented by way of an affidavit.

For the proposition that alternative remedy is not a bar, he relied on the following decisions.

- i) State of H.P. and others v. Gujarat Ambuja Cement Ltd., & Anr.
- ii) Calcutta Discount Co. Ltd., v. Income Tax Officer, Companies District I, Calcutta & Anr.
- iii) Gujarat Steel Tubes Ltd. & Ors. V. Gujarat Steel Tubes Mazdoor Sabha & Ors.

On the proposition of effect of orders of Supreme Court on court monitoring, he relied on the following decisions.

- i) Supreme Court order dated 17.12.2013 in W.P. (Criminal) No. 120 of 2012.
- ii) Jakia Nasim Ahesan and Anr. v. State of Gujarat and Ors.
- iii. Contending that the order of the Supreme Court regarding monitoring of the cases is not Obiter Dicta, he relied on the decision of Arun Kumar Aggarwal v. State of Madhya Pradesh and Ors.

For the proposition that on account of the orders impugned, the reputation of the petitioners has adversely effected, he relied on the decision of State of Bihar v. Lal Krishna Advani & Ors.

On the proposition that an order passed in exercise of quasi-judicial power strict compliance of the statutory procedure is mandatory, he relied on the decision of

Aslam Mohammad Merchant v. Competent Authority and others.

15. Sri P.S.P. Suresh Kumar, standing counsel for Enforcement Directorate, raised preliminary objection on the maintainability of the writ petition. Order under Section 5(1) is a provisional measure and valid for maximum period of 180 days. The provisional attachment has to be approved by the adjudicating authority after proper adjudication within 180 days. The Act envisages three layers of the grievance redressal in addition to safeguards incorporated in Section 5(1) of the Act. The adjudicating authority may confirm or set aside the provisional attachment. If adjudicating authority confirms the order of provisional attachment, the Act envisages appeal before the Appellate Tribunal and if the Appellate Tribunal also affirms, further appeal is provided to this Court. Petitioner has effective alternative remedy. Petitioner can raise all pleas raised herein before adjudicating authority and if the adjudicating authority is convinced that attachment was not warranted, he can set aside the order of provisional attachment. Even before the proceeding are initiated and concluded by the adjudicating authority, the petitioner has invoked jurisdiction of this Court.

16. Learned standing counsel further contended that at this stage, it is premature to go into the validity of power exercised by the Enforcement Directorate under Section 5(1) and it would amount to prejudging the issue and scuttling adjudicating process engrafted into the statute and nullify the very scheme of the act. A detailed procedure is envisaged by the Act and any interference at this stage would amount to scuttling this procedure. As effective mechanism is already provided by the Act, petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

17. Learned standing counsel further contended that on 25.7.2014, Supreme Court passed orders, inter alia, holding that all matters concerning allocation of coal blocks are monitored by the Supreme Court and even against the order of provisional attachment, the petitioners have to approach the Supreme Court and this Court cannot go into the issue of validity of order of provisional attachment under Section 5(1) at this stage.

18. The competent authority has conducted detailed investigation into the allegations of violation of the provisions of the Act, has examined the accused, recorded their statements, gone through the voluminous record and having found prima facie that the provisions of Section 3 of the Act are attracted decided to provisionally attach the shares to the value of alleged proceeds of crime. As mandated by Section 5(1), detailed exercise was conducted and having found that the petitioners are in possession of proceeds of crime and there is possibility of concealing the proceeds of crime/transferring/dealing with in any manner to frustrate the proceeding for confiscation the order is made. Enforcement Directorate cannot monitor the day to day functioning of the petitioners and does not have means to monitor sale of shares and other assets. Therefore, it is necessary to attach the shares to the extent of assessment of proceeds of crime.

Thus, having satisfied that the ingredients of section 5(1) are attracted, the order of provisional attachment is passed. It is a provisional decision and a full gamut of such decision shall be gone into during the adjudication process under Section 8 of the Act. As mandated by Section 5(2), complaint is filed before the Adjudicating Authority and Adjudicating Authority has commenced proceedings under Section 8 of the Act. Thus, interference of the order of provisional attachment at this stage would frustrate the proceedings initiated before the Adjudicating Authority. No grave prejudice is caused to the petitioners warranting interference by this Court as petitioners can effectively represent before the Adjudicating Authority against the provisional attachment order.

19. In support of his contentions, learned standing counsel placed reliance on the following decisions:

For the proposition that when an affective alternative remedy is available, writ petition is not maintainable, learned standing counsel relied on the following decisions.

i) Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another.

ii) United Bank of India v. Satyawati Tondon and others.

iii) First Flight Couriers (P) Ltd. rep. by its General Manager v. Authority appointed under Section 48(1) of A.P. Shops & Establishment Act, 1988 & Assistant Commissioner of Labour-III, Hyderabad and others.

On the contention that no prejudice is caused to the petitioners by provisional attachment and that writs are not maintainable to go into the correctness or otherwise of an order of provisional attachment under Section 5(1), he relied on the decision of Madras High Court in G. Srinivasan v. Chairperson Adjudicating Authority under PMLA, New Delhi.

He contended that the process by which the conclusion is reached is the reason and the material on record supports the decision of the Enforcement Directorate to provisionally attach the property in exercise of power under Section 5(1), learned standing counsel relied on the following decisions.

i) Krishnan Nair v. State of Kerala.

ii) Sree Eswara Rice Mill Industries, Shimoga and etc. v. Deputy Commissioner, Shimoga District, Shimoga and another.

iii) Rahda Mohan Lakotia v. The Deputy Director, Enforcement Directorate, Mumbai.

20. On various issues agitated in this writ petition, learned standing counsel extensively relied on the decision of Division Bench of this Court in B. Rama Raju and others v. Union of India, Ministry of Finance, Department of Revenue, rep. by its Secretary (Revenue) New Delhi and others.

21. I have given my anxious consideration to rival submissions.

22. Act, 2002 is brought out with principal object to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering. The object of this enactment is not only to punish the person who receives proceeds of crime after following due procedure, but the assets acquired by utilization of proceeds of crime should also be confiscated.

23. Section 3 of the Act, prescribes the offence of money laundering and Section 4 prescribes punishment for money laundering. To attract the provisions of Section 3, it is necessary that the person indulged in proceeds of crime, which means as defined in section 2(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

24. Once a complaint is received by the Enforcement Directorate that a person is involved in money laundering, the Enforcement Directorate sets in motion the investigation on the allegations of money laundering against the person. Chapter-II of the Act prescribes offence of money laundering and the punishment thereof. Chapter-III prescribes procedure for attachment, adjudication and confiscation of property.

25. During the period after the commencing of investigation into the allegations and before finalization of the criminal proceedings leading to conviction and sentencing, the act also vests power in the Enforcement Directorate to attach the property involved in money laundering, which is liable to be confiscated if the charge of money laundering is proved.

26. Prosecuting for offence of money Laundering requires a full fledged trial and takes considerable time. In the meantime, unless the property is attached, the person is entitled to deal with the property. It is possible for the person to completely dispose of the properties which are acquired by committing crime of money laundering, and also can conceal or deal with such property, which would ultimately frustrate the proceedings for confiscation under the Act. The scheme of the Act would bring out that if the Enforcement Directorate has reason to believe that the property in possession of a person against whom crime is already registered is acquired as a result of proceeds of crime and he has reason to believe that there is possibility to conceal or transfer or deal with in any manner which may result in frustrating the proceedings relating to confiscation of such proceeds of crime, he can provisionally attach the property. The Enforcement Directorate passes an order of provisional attachment under Section 5(1) and to place the matter before the adjudicating authority. Provisional attachment would only disable the person charged from dealing with the property. He is not dispossessed from the property till a decision is made by the adjudicating authority under Section 8(2). Confiscation would arise only after the person is convicted of crime under the Act.

27. However, to prevent abuse of such power and to resort to unwarranted

attachment of the properties of the person, certain safeguards are incorporated into Section 5. Thus, before taking a decision to provisionally attach the property, the competent authority should have reason to believe and on the basis of material in his possession, that a person is in possession of proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating the proceedings and he must pass orders in writing for such provisional attachment.

28. The provisional attachment decision is a decision based on the understanding of the competent authority on the material available in his possession and it is a tentative decision. Such decision has to be affirmed by the Adjudicating Authority after following due process. Within thirty days from the date of provisional attachment the Enforcement Directorate has to file a complaint before the Adjudicating Authority stating the facts of such attachment. Such provisional attachment is valid only for a period of 180 days.

29. The decision of Enforcement Directorate under Section 5(1) is tentative and can become effective only after an order is passed by the adjudicating authority under Section 8. Provision in Section 5 cannot be seen in isolation, but has to be read with provision in Section 8.

30. The Adjudicating Authority independently considers the issue of such attachment and if he has reason to believe that the person is in possession of proceeds of crime, he shall issue show cause notice to such person. The person is entitled to explain the sources of income, earning or assets, out of which or by means of which has acquired the property, lead evidence and furnish any other information in his possession to justify the legitimate means of acquiring the properties in issue.

31. Wide amplitude of powers are vested in the adjudicating authority in dealing with the matter concerning the attachment of properties. A bare look at the provisions of Sections 5 and 8, it cannot be said that Adjudicating Authority is not competent to go into the manner of exercise of power by Enforcement Directorate under Section 5(1). The Adjudicating Authority shall afford due opportunity of hearing to the person concerned. He is mandated to consider all aspects and on duly considering the submissions of the aggrieved person shall record a finding that all or any of the properties shown in the notice issued under Section 8(1) are involved in money-laundering.

32. I am fortified by the decision of Division Bench of this Court in B. Rama Raju and others. The Division Bench considered the whole gambit of the Act. The Division Bench held as under:

28. Section 8(1) clearly postulates affording of an opportunity to a person in possession of proceeds of crime to indicate the sources of his income, earnings or assets; out of which or by means of which he has acquired the property attached, under Section 5(1) or seized under Sections 17 or 18 the evidence on which he relies and other relevant information and particulars. It is therefore

clear that where a property is provisionally attached under Section 5, the person in possession of such property may avail the opportunity under Section 8 to indicate/establish that he has acquired the property attached (prima facie the proceeds of the crime) out of his lawful earnings or assets, that he has the means therefore legitimate, bona fide and at fair market value of such property; and that the value paid for acquisition of the property and not the property in his possession that constitutes proceeds of crime, if at all. On such showing, to the satisfaction of the adjudicating authority, it would perhaps be not the property in possession of a person but the fair value for which he has acquired the property and paid to the transferor that constitutes proceeds of crime and the authorities may have to proceed against the property or value in the hands of the transferor.

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68. We consider Sections 5, 8(1), (2) and (3); 17; and 18 to comprise an intermeshing raft of provisions. The process of provisional attachment under Section 5; seizure under Section 17(1)(c) or 18(1) are, in the legislative scheme of the Act, intended to empower the appropriate authority to provisionally attach but without the consequence of dispossession from immovable property (under Section 5) or to seize a property (under Sections 17 or 18), on the basis of a unilateral satisfaction of the appropriate authority (if there is reason to believe; such belief to be recorded in writing), that such property constitutes proceeds of crime, in the possession, ownership or control of any person, whether or not accused of an offence under Section 3.

69. At the provisional attachment stage under Section 5(1) or a seizure under Section 17 or 18, the prima facie satisfaction that the property in question constitutes proceeds of crime as defined in the Act, is a satisfaction that the appropriate authority arrives on his own; on the basis of the report as to the scheduled offence forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 or a complaint filed by a person authorized to investigate an offence enumerated in the Schedule before a Magistrate or a Court for taking cognizance of the scheduled offence [first proviso to Section 5(1) and proviso to Section 18(1)]; or on the basis of information in the possession of the authorized officer [under Section 17(1)]. No notice or providing of an opportunity to the person in possession, ownership or control of the property, believed by the authorized officer to constitute proceeds of crime; hearing the version or considering the material produced by any such person (in support of a claim that the property does not constitute proceeds of crime in view of the sources of his income, earning or assets out of or by means of which the property was acquired), is envisaged or obligated, at this stage of the process.

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79. The several degrees of assumptions and reasons to believe on the part of the adjudicating authority, anterior to the stage of confiscation are thus in the scheme of the Act prima facie and tentative assumptions or reasons to believe, since determination of the guilt of the person accused, of the offence of money-laundering is within the exclusive domain of the Special Court constituted for trial of the offence and outside the domain of the adjudicating authority under Section 8.

33. Thus, there is no merit in the contention urged by the petitioners that they have no effective or efficacious remedy under the Act necessitating institution of the writ petition by invoking extraordinary jurisdiction of this Court. Entertainement of writ petition at this stage would amount to scuttling the statutorily engrafted mechanism on attachment of properties.

34. Article 226 of the Constitution vests wide discretion in the Writ Court to entertain the writ petition on any grievance and to grant appropriate relief. It is an extraordinary jurisdiction vested in the writ Court. The Writ Courts observe self-imposed restraint in exercising the jurisdiction under Article 226. Availability of alternative remedy is not a bar to entertain a writ petition. Ordinarily the writ petition is not entertained under Article 226 if the aggrieved person has an efficacious and effective remedy provided by concerned statute where under an adverse decision is taken against the person, which he seeks to assail in the writ petition. Notwithstanding availability of alternative remedy in a case of exceptional nature or a case of glaring injustice writ Court can entertain a writ petition. Constitutional Courts have laid down parameters for exercising of such discretion.

35. In Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, Supreme Court exhaustively reviewed the precedents on the subject. Supreme Court held as under:

11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainement of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh (1972) 3 SCC 234, Titaghur Paper Mills Co. Ltd. v. State of Orissa, Harbanslal Sahnia v. Indian Oil Corpn. Ltd. (2010) 3 SCC 732 and State of H.P. v. Gujarat Ambuja Cement Ltd.)

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15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

36. In Nivedita Sharma Vs. Cellular Operators Association of India and others, Supreme Court held as under:

11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

37. The petitioners have effective and efficacious statutory remedies to prove the nature of acquisition of assets and to ventilate their grievances. Furthermore, at the stage of provisional attachment the person concerned is not dispossessed of the property, but is only prevented from dealing with the property till orders are passed by the adjudicating authority under Section 8(2). Against order of the adjudicating authority under Section 8(2), appeal shall lie to the Appellate Tribunal under Section 26 and further appeal to the High Court under Section 42. The statute has provided enough safeguards and layers of redress mechanism. The writ Court cannot go into the merits of the issue at this stage even before the attachment order has become final, investigation is completed and trial concluded and issue of attachment is considered by Adjudicating Authority, first Appellate Authority and second Appellate Authority. It is premature to go into the

validity of attachment order at the threshold and even before the Adjudicating Authority considers the issue. It is also to be born in mind that any observations made by the Court would have bearing on the pending investigation and trial.

38. The Joint Director is competent to pass orders of attachment. It is not a case of lack of jurisdiction to Enforcement Directorate. Violation of principles of natural justice at the provisional attachment stage does not arise as statute has not made provision of opportunity of hearing prior to provisional attachment. Decision to attach is based on the assessment by Enforcement Directorate as per material in its possession. It is a tentative decision. Such decision is to be placed before the Adjudicating Authority. Right of hearing is provided before adjudicating authority. Sections 5(1) and 8 are in the statute book and have stood the test of judicial scrutiny. It is not a case of exceptional nature warranting interference by writ Court at the threshold. Not a case of glaring injustice demanding affirmative action notwithstanding an effective statutorily engrafted layers of remedies.

39. I am also not persuaded to entertain this writ petition at this stage in view of the order passed by the Supreme Court on 25.07.2014. As rightly contended by the learned standing counsel for Enforcement Directorate that Supreme Court in its order dated 25.07.2014 in W.P. (Civil) Nos. 120, 463, 515 and 2012 and 283 of 2013 directed that any prayer for stay or impleading the progress in the investigation/trial can be made only before the Supreme Court and no other Court shall entertain. As defined in Section 2(1)(na) investigation includes all proceedings under the Act conducted by the Enforcement Directorate for collection of evidence. The order of Supreme Court in W.P. (Civil) No. 120 of 2012 dated 17.12.2013 do not come to the aid of the petitioner. The decisions of Supreme Court in Jakia Nasim Ahesan and Arun Kumar Aggarwal also do not come to the rescue of the petitioner. It is not a case of observation. Supreme Court directed not to entertain any prayer for stay. It is not opposite to take note of the fact that on 25.08.2014 Supreme Court rendered judgment in W.P. (Criminal) No. 120 of 2012 holding the allocation of all coal blocks as illegal, including the one allocated to petitioners.

40. Several contentions are urged on merits and on the validity of the power exercised by the Enforcement Directorate to provisionally attach the properties of the petitioners. Since the writ petition is not entertained on the ground that petitioners have effective and efficacious remedy under the Prevention of Money Laundering Act, 2002 (Act 15 of 2010) and the order of Supreme Court dated 25.7.2014, the other contentions are left open.

41. For the foregoing reasons, the writ petition fails and accordingly the same is dismissed. No costs. Sequel to the same the miscellaneous petitions, if any stand dismissed.