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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3909/2017 and CM No.17256-57/2017

APRAJITA SINGH AND ORS

..... Petitioners

Through : Mr. Dayan Krishnan, Sr.
Adv. with Mr. Parmatma
Singh, Mr. Mayank Jain, Mr.
Madhur Jain and Ms. Manvi
Priya, Advs.

versus

JOINT DIRECTOR, DIRECTORATE OF
ENFORCEMENT AND ANR

... Respondents

Through : Mr. Sanjay Jain, ASG with
Mr. Amit Mahajan, CGSC,
Mr. Kunal Dutt, Mr.
Vignaraj Pasayat and Ms.
Karnika Singh, Advs. for
R-1&2.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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05.05.2017

CM No.17257/2017

Allowed, subject to just exceptions.

The application is disposed of.

W.P.(C)No.3909/2017

1. Issue notice to show cause as to why *rule nisi* be not issued.

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2. Mr. Amit Mahajan, CGSC accepts notice on behalf of the respondents and prays for time to file a counter affidavit. Let the same be filed within six weeks from today. Rejoinder thereto, if any, be filed before the next date.

List on 26th July, 2017 along with WP(C)No.4228/2016.

CM No.17256/2017 (Stay)

1. Issue notice.
2. Mr. Amit Mahajan, CGSC accepts notice on behalf of the respondents and prays for time to file a reply. Let the same be filed within six weeks from today. Rejoinder thereto, if any, be filed before the next date.
3. The writ petitioners lay a challenge to the constitutional validity of the second proviso to sub-section (1) of Section 5 of Prevention of Money Laundering Act, 2002 (“PML Act” hereafter). The petitioners have also challenged the Provisional Attachment Order No. 01/2017 dated 31st March, 2017 in ECIR Case No.ECIR/HQ/02/HIU/2015/117 and proceedings initiated against the petitioners pursuant thereto.
4. We are informed by Mr. Sanjay Jain, Id. ASG for the respondents that on 28th April, 2017, on completion of the exercise prescribed under sub-section (5) of Section 5 of the PML Act, the respondents have registered a complaint which is pending before the adjudicating authority.
5. Mr. Dayan Krishnan, Id. Senior Counsel appearing for the petitioners submits that previous provisional attachment order

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dated 23rd March, 2016 against the present petitioners was assailed by way of WP(C)No.3008/2016.

6. We are informed that in this writ petition also the petitioners have made a challenge to the constitutional validity of the second proviso to sub-section (1) of Section 5 of the PML Act.

7. While issuing notice to the respondents in WP(C) No.3008/2016 and in the interim application, this court had granted an interim order staying all further proceedings pursuant to the impugned order of provisional attachment order so far as the petitioners therein were concerned, though the impugned attachment was directed to continue.

8. Mr. Sanjay Jain, Id. Additional Solicitor General has however, placed before us an interim order dated 30th of May 2016 passed in WP(C)No.4228/2016, *Pratibha Singh & Anr. v. Joint Director, Enforcement Directorate & Anr.*, whereby the court while directing the continuation of attachment, permitted continuation of the inquiry under Section 8(1) of PML Act. It was however, directed that the order, if any, passed by the adjudicating authority against the petitioners therein under Section 8(3) shall not be given effect to. Mr. Sanjay Jain, Id. ASG would submit that the respondents deserve to be permitted to continue with the proceedings under Section 8 of the PML Act.



9. Having given our considered thought to the submission made, we are of the view that while the attachment deserves to be maintained, however it would be in all fairness to all the parties concerned, if the inquiry under Section 8 is not interdicted. The same would be in the interest of expediency as well as justice, inasmuch the requisite evidence and records would be readily available as of now that may dissipate with the passage of time.

10. In view of the above, while maintaining the attachment directed vide provisional attachment order dated 31st March, 2017 as well as continuation of the inquiry under Section 8 of the PML Act, it is directed that the orders, if any, passed by the adjudicating authority against the petitioners herein under Section 8 (3) shall not be given effect to.

11. It is contended before us by Mr. Dayan Krishnan, Id. Senior Counsel for the petitioners that the names of all these petitioners do not feature either in the ECIR or in the FIR which have been instituted at the instance of the respondents.

12. In response, Mr. Sanjay Jain, Id. ASG would contend that so far as the invocation of the powers of the respondents under Section 5 is concerned, the same is not restricted to persons named in the FIR or ECIR.



13. Be that as it may, it shall be open for the writ petitioners to place these submissions before the adjudicating authority which shall consider the rival submission and pass an order thereon.

Dasti to parties.

List on 26th July, 2017.

ACTING CHIEF JUSTICE

ANU MALHOTRA, J

MAY 05, 2017

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