

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 17513 of 2022

Shree Hanuman Cotton Mills Ltd.
and others
Vs.
Union of India and others.

Mr. Jishnu Chowdhury,
Mr. Pratyush Jhunhunwala,
Mr. Abhidipto Tarafder,
Mr. Pratyush Kejriwal

...for the petitioners.

Ms. Smita Das De

...for the Union of India.

Mr. Arijit Chakrabarti

...for the Enforcement Directorate.

1. Since learned counsel for the respondent no. 2 intends to file an affidavit-in-opposition to controvert the allegations made in the writ petition, the matter is taken up for hearing on the limited question of grant of interim orders.
2. The facts, in a nutshell, are as follows:
3. The petitioner no. 1 is a company which granted lease in respect of a land to the petitioner no. 2-company. Petitioner no. 3 is the director of both petitioner nos. 1 and 2. His son, petitioner no. 4, is a director of petitioner no. 2. Petitioner no. 3 Ramesh has a brother by the name of Mahesh.

4. The petitioner no. 1-company owns a land of about 20 acres at Fuleshwar in Howrah district, where it has allegedly erected a factory shed, office building and other structures. The entire property is hereinafter referred to as “the said property”.
5. The present writ petition has been preferred against an order of provisional attachment dated March 31, 2022 under Section 5 (1) of the Prevention of Money Laundering Act, 2002 (in short, “the PMLA”) as well as proceedings initiated under Section 8 (1) of the PMLA by issuing a show cause notice dated May 5, 2022.
6. According to the petitioners, copies of the show cause notice dated May 5, 2022 were served on the petitioners together with the order dated March 31, 2022 and the original complaint of April, 2022.
7. On March 30, 2013 an FIR was registered with the Central Bureau of Investigation (CBI) against Mahesh, his wife Alka and their son Siddharth Kejriwal under Sections 120B and 420 of the Indian Penal Code and Section 13 (2) read with Section 13 (1)a (d) of the Prevention of Corruption Act, 1988.
8. Petitioner nos. 2 and 3 received summons dated March 23 and March 16, 2022 respectively and appeared before the Deputy Director, Kolkata Zone I of the Enforcement Directorate (ED), who is the respondent no. 2 herein.

9. Subsequently, the impugned show cause notice under Section 8 of the PMLA and provisional attachment order dated March 31, 2022 passed under Section 5 (1) of the PMLA were served on the petitioners. By the said order, 3.60 acres out of the total 20 acres of the said property, an office space, 768 shares of the petitioner no. 1-company held by Alka and 1025 shares, previously of Mahesh and allegedly transferred to the petitioner no. 3 Ramesh in 1999 were provisionally attached.
10. Learned counsel for the petitioners argues that the 768 shares were acquired by Alka more than two decades prior to the commission of the scheduled offence, since September 29, 2002. A civil suit, bearing Title Suit No. 13 of 2019 was filed by the petitioner and “his branch of the family” in the Court of the Civil Judge (Senior Division) at Uluberia, inter alia, for a declaration that Alka Kejriwal has been holding the said 768 shares as a trustee for the benefit of the petitioner no. 3 and his family branch. On a civil revision filed by Mahesh, this Court rejected the plaint of the said suit on the ground of res judicata, against which a Special Leave Petition was allegedly filed by the plaintiffs.
11. In any event, it is argued, the shares of the petitioner no. 1-company could not have been attached since the company is a separate juristic entity. By placing

reliance on *Bacha Guzdar v. Commissioner of Income Tax (AIR 1955 SC 74)*, *Electronics Corporation of India Ltd. & Ors. v. Secretary, Revenue Andhra Pradesh & Ors. [(1999) 4 SCC 458]* and *Pesticides & Brewers Ltd. V. Narendra Kumar Berlia & Ors. (2011 SCC Online Cal 1570)*, learned counsel for the petitioners argues that shareholders have no right in the assets of the company.

12. That apart, the assets attached were acquired much prior to the alleged date of crime, that is, 2010. The shares were purchased in 1989 and thereafter the said property at Fuleswar was purchased. As such, it is argued that none of the attached properties could be 'proceeds of crime' as envisaged in the PMLA, to justify provisional attachment under Section 5 (1) thereof.
13. Learned counsel for the petitioners further argues that there is no material in the possession of the respondents to show that the petitioners are in possession of proceeds of crime, no belief has been recorded in writing or otherwise that the petitioners are in possession of proceeds of crime and there is nothing to show that proceeds of crime are likely to be transferred, concealed or dealt with. Placing reliance on *Opto Circuit India Ltd. V. Axis Bank & Ors., reported at (2021) 6 SCC 707*, it is argued that the above ingredients, missing in the present case,

are necessary for exercise of jurisdiction under Sections 5 and 8 of the PMLA.

14. Next relying on *Suman Chattopadhyay & Ors. v. Directorate of Enforcement, Govt. of India & Ors.*, reported at 2022 SCC Online Cal 1807, learned counsel contends that, as held therein, the chain of reasons to believe, expressed in writing, must indicate, in specific terms, that the proceeds of crime/ the property in question is derived directly or indirectly by the person as a result of criminal activity relating to a scheduled offence. Moreover, conditions of both clause (a) and (b) of Section 5 (1) are required to be satisfied for invocation of jurisdiction under the said provision. Learned counsel also cites for such proposition a later judgment of the Supreme Court reported at 2022 SCC Online SC 929 (*Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*).
15. There are no allegations in the present case that the petitioners are involved in the crime or are recipients of the proceeds of crime. Aspersion has been cast against Mahesh Kejriwal and his immediate family and not the petitioners or the company and there is a long-standing litigation concerning a family settlement between the said Mahesh and petitioner no. 1.

16. Thus, the petitioners argue, the impugned show cause notice and order of provisional attachment are without jurisdiction. Hence, the writ court can entertain a challenge to both under Article 226 of the Constitution of India, as no authority can confer jurisdiction on itself by deciding a jurisdictional fact wrongly, as held in *Raza Textiles Ltd. V. Income Tax Officer, Rampur*, reported at (1973) 1 SCC 633.
17. Moreover, alternative remedy is not an absolute bar, particularly when an act without jurisdiction is questioned. Learned counsel for the petitioners refers to *Whirlpool Corp. v. Registrar of Trademarks, Mumbai* [(1998) 8 SCC 1] in such context.
18. Learned counsel for the ED (respondent no. 2) submits that the writ petition should be dismissed on the ground of delay alone. The provisional attachment order under Section 5 (1) of the PMLA was issued on March 31, 2022. Copies of the said order and original complaint under Section 5 (5) were received by petitioner no. 4 on behalf of all petitioners on April 26, 2022. Thereafter the show cause notice was issued under Section 8 (1) of the PMLA on May 5, 2022.
19. The petitioners and other defendants sought extension of time for giving detailed reply and providing all necessary documents on June 14, 2022. The other defendants filed detailed replies to

the show cause notice on June 28, 2022, to which rejoinders were filed by the complainant ED and forwarded to the Adjudicating Authority (AA) on July 15, 2022.

20. On August 1, 2022 the present writ petition was filed and the first hearing took place before the AA on August 26, 2022. The final hearing was scheduled on September 15, 2022. All parties allegedly made detailed submissions and arguments, but the defendants sought time to file written submission, which was granted by the AA for five days. However, on September 20, 2022 the defendants sought more time and final hearing was fixed on September 23, 2022 at 4:15 pm. Thus, it is submitted by the ED, the petitioners seek to intentionally drag the matter on various pretexts.

21. Learned counsel appearing for the ED cites several judgments in support of his proposition that that if a 'statutory remedy' is available, a writ petition is not maintainable. The said judgments are as follows:

I. *Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal [(2014) 1 SCC 603] – Ref. Para 15 and 16;*

II. *Raj Kumar Shivhare Vs. Directorate of Enforcement [(2010) 4 SCC 772] – Ref. Para 31;*

III. *M/s. Rose Valley Real Instates & Constructions Pvt. Ltd. & anr. Vs. Securities and Exchange*

Board of India & ors. [(2011) 4 CHN 91] – Ref. Para 24, 30, 31 and 32;

IV. *A John Kennady Vs. Joint Director, Directorate of Enforcement, Cochin Zonal Office, Cochin [AIR OnLine 2020 MAD 2243] – Ref. Para 11, 13 and 25;*

V. *Devdas Multimedia Pvt. Ltd., Bangalore Vs. Joint Director, Directorate of Enforcement, Bangalore and others [2018 (1) AKR 87] – Ref. Para 28, 29, 30 and 31;*

VI. *Abhay Nigam Vs. Union of India [AIR OnLine 2021 MP 433] – Ref. Para 5;*

VII. *Namrata Marketing Pvt. Ltd. Vs. UOI [AIR OnLine 2021 ALL 429] – Ref. Para 15, 18, 23, 24, 25, 26, 30 and 31;*

VIII. *Impex Ferro Tech Ltd. & another Vs. Union of India and others [Order dated 12.07.2021 passed by the Hon'ble High Court at Calcutta in W.P.A. No.11046 of 20212];*

IX. *The State of Maharashtra and others Vs. Greatship (India) Ltd. [Judgment dated 20.09.2022 passed by the Hon'ble Supreme Court of India in Civil Appeal No.4956 of 2022] – Ref. Para 6 and 10;*

22. Learned counsel for the respondent no. 2-ED next contends that under the PMLA, attachment of third-party property is also permissible. For such

proposition, learned counsel relies on *Vijay Madanlal (supra)* of the Supreme Court, *Radha Mohan Lakhota & Ors. v. Deputy Director, PMLA, Directorate of Enforcement, Ministry of Finance [2010 (6) AIR Bom R 612]*, of a Division Bench of the Bombay High Court and *Gautam Khaitan & Anr. V. Union of India [2015 CRL.L.J.2112]*, passed by a learned Single Judge of the Delhi High Court.

23. It is next argued by the ED that attachment of property acquired even prior to commission of the scheduled offence is permissible. In support of the said argument, learned counsel relies on paragraphs 68 and 69 of *Vijay Madanlal (supra)*, *The Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank & Ors.* and *Prakash Industries Ltd. & Anr. V. Directorate of Enforcement*, both judgments of learned Single Judges of the Delhi High Court.
24. Learned counsel for the ED also cites a judgment dated February 7, 2022 passed by the Supreme Court in SLP (Cri) No. 565/2022 in *M/s Kaushalya Infrastructure Development Corporation Ltd. V. Union of India & Anr.* to argue that a proceeding under Section 8 of the PMLA is independent of a provisional attachment order under Section 5 (1) of the PMLA.
25. Learned counsel also insinuates that the petitioner no. 1-company has had no business for the last

decade and is a hoax to park siphoned money and that the petitioner no. 3 Ramesh and his brother Mahesh are colluding between themselves to escape the net of investigation on money laundering.

26. On merits, the primary questions which essentially fall for consideration, even at the ad interim stage, are as follows:-

- (i) Whether the present challenge is maintainable/entertainable under Article 226 of the Constitution of India;
- (ii) Whether a third party property, having no nexus with the proceeds of crime, can be provisionally attached under Section 5 (1) of the PMLA; and
- (iii) What is the effect of quashing of an order under Section 5 (1) on a connected adjudication under Section 8 of the PMLA?

27. Taking first things first, as settled by the Supreme Court in several cases, including the ones cited by counsel in the present case, a patent jurisdictional error can be interfered with by this court even if an alternative remedy is available. *Whirlpool's case* has summed up the limited windows for such interference. Even as per *Chhabil Das's case*, as rightly argued by the petitioners, where a statutory authority has failed to act in accordance with the statute in question or without jurisdiction, the same

comprises an exception to the alternative remedy bar. The distinction sought to be drawn in this regard by learned counsel for the ED between an “alternative” remedy and a “statutory” remedy is artificial and not borne out by any of the cited judgments. Often, the two terms are interchangeable. Whereas alternative remedy is a genus, statutory remedy is one of the species thereunder. Therefore, the test for interference in the present case is whether any patent jurisdictional contravention of the respondents has been established *prima facie* by the petitioners.

28. To answer such query, it is necessary to delve into the second issue, that is, whether a third party property, having no nexus with the proceeds of crime, can be provisionally attached under Section 5 (1) of the PMLA.
29. Section 2 (1) (u) of the PMLA defines “proceeds of crime” to mean any 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 or, where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.
30. The Explanation to the said clause clarifies, for the removal of doubts, that the said term includes

property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relating to the scheduled offence.

31. Clause (v) of Section 2 (1) and its Explanation provides that “property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located; it further includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.
32. In the present case, a portion of the property of the petitioner no.1-company and shares in the names of Mahesh and Alka in the company have been attached. The respondents allege that such fraction corresponds with the shareholding ratio of the accused Mahesh, Alka and their family in the petitioner no. 1-company.
33. *Bacha Guzdar (supra)* is a landmark judgment on the now-settled proposition that shareholders, irrespective of the size of their shareholding in a company, have no rights whatsoever in the assets of the company. The ratio of the said judgment has been followed in *Electronics Corporation (supra)*,

Pesticides & Brewers (supra) and a series of other judgments of the Supreme Court, our court and other High Courts as well.

34. It is nobody's case that any of the accused persons are directors of the petitioner no. 1-company. The respondents' best case is that they are shareholders in the company. Hence, there is no scope of lifting the legal fiction of corporate veil in the present case, since, in their capacity as mere shareholders of the petitioner no. 1-company, the accused persons have no right, title and/or interest whatsoever in the assets of the company.
35. The respondents have cited certain decisions in support of their contention that even third party properties can be attached. The first of such judgments is *Vijay Madanlal (supra)*. The relevant paragraph in this context, which is relied on by the respondent no. 2, is paragraph 65 thereof. The Supreme Court holds therein that "... *The sweep of Section 5 (1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.*"

36. The above ratio is self-explanatory and it does not require Rocket Science to decipher that it is not applicable to the present case, in the absence of any connection being established, or even alleged, between any of the present petitioners and any “activity connected with the proceeds of the crime”, at least insofar as the assets of the company are concerned.
37. The next judgment cited in this context is the Division Bench judgment of the Bombay High Court in *Radha Mohan Lakhotia’s case*. In paragraphs 9 to 13, relied on by learned counsel for the respondent no.2, the scope of applicability of the expression “proceeds of crime” as envisaged in Section 5 of the PMLA has been elucidated. What has been held is that the “proceeds of crime” may be or can be in possession of “any person”, be it a person charged of having committed a scheduled offence “or otherwise”. It defies logic as to how the said ratio is applicable in the present case, where no nexus whatsoever has been alleged or even established between the “crime” and the “property” involved. A property purchased decades before the alleged commission of crime, that too, not committed by any of the petitioners, cannot be a trigger to attach the same, provisionally or otherwise.

38. The third judgment cited in support of the 'third-party proposition' is *Gautam Khaitan*, delivered by a learned Single Judge of the Delhi High Court. Paragraph 10.3 thereof contains the crux of the ratio. The Bench holds that the designated officer can provisionally attach a property which does not concern a person charged with a scheduled offence as long as the following ingredient is found: he has reason to believe, *based on material in his possession, that a person is in possession of proceeds of crime and, such proceeds are likely to be concealed, transferred or dealt with in any manner which may result in frustrating proceedings relating to confiscation of proceeds of crime.*
39. First of all, there is nothing in the order of provisional attachment to connect the acquisition of the assets of the petitioner no.-1 company with the commission of the crime long thereafter. Secondly, the petitioners are in no way even remotely connected with the alleged crime, apart from committing the unintentional crime of being relatives of the accused persons.
40. It seems a mere childish whim and paranoid fancy of the respondent no. 2 agency and its officials to apprehend a ghost where there is none to attach a fraction of the assets of the company "in proportion with the shares held" by the accused person in the

company, without considering the rudiments of Company Jurisprudence. Even if the corporate veil is pierced to shreds and lifted beyond recognition, a holder of certain shares of a company, acquired much prior to the alleged date of crime, cannot have an iota of right whatsoever over the assets of the company, also acquired much before such date. The argument that the company may deal with or encumber its assets, thereby denuding the value of its shares, is too remote to carry any weight.

41. Even if only the shares in the name of the accused persons in the company (although acquired much prior to the alleged crime) were sought to be attached provisionally under Section 5 of the PMLA, some reason could be laboriously attributed to the same. Here, the respondent no. 2 goes one step further and calculates the share of the company's assets in ratio with the number of shares held in the company by the accused and attaches the said "share" in the property provisionally. This would tantamount not to law enforcement but unwarranted muscle-flexing by the respondent no. 2-agency.
42. The next line of argument of learned counsel for the petitioner no. 2 is that property acquired prior to commission of the scheduled offence may also be attached. Two decisions of learned Single Judges of the Delhi High Court have been cited in this context.

However, the said argument, when applied to the present case, is not only misdirected but specious because of the reasons given below, at least insofar as the assets of the company are concerned.

43. The first of the two decisions, that is, the *Axis Bank case*, has also been relied on in the second, that is, the *Prakash Industries case*. The Court proceeds to highlight the part of the inclusive definition of “proceeds of crime” in Section 2 (1) (u) of the PMLA which includes “*the value of any such property*” to draw a distinction between “tainted” and “untainted” or “deemed tainted” property. On such logic, it is held that even untainted property which may have been acquired “*by the suspect legitimately without any connection with criminal activity or its result*”.
44. However, in the present case, the immovable property attached provisionally is owned by the petitioner no. 1-company and was purchased by the company much prior to the chain of events leading to the alleged money laundering. The petitioners are not even “suspects”, although some of them were summoned under Section 50 of the PMLA merely as persons who may be possessing relevant records or having knowledge of the circumstances of the commission of crime by the accused persons. Such circumstances, by themselves, are not sufficient to justify even provisional attachment of a portion of

the petitioner no. 1-company's assets. In fact, Section 2 (1) (u) and its Explanation specifically correlates the phrase "or the value of any *such* property" with being derived or obtained "*directly or indirectly as a result of any criminal activity relatable to the scheduled offence*". In the absence of such correlation between the company's assets and the alleged scheduled offence in any manner whatsoever, the respondent no. 2 acted in gross abuse of the process of law in passing the provisional attachment order in respect of the company's property. Hence in the present case, the second question is also answered *prima facie* in favour of the petitioners.

45. With regard to the third question, the last argument of the respondent no. 2 is that the proceeding initiated under Section 8 of the PMLA is independent of the order of provisional attachment under Section 5 of the said Act. Learned counsel has cited the Supreme Court judgment rendered in *M/s Kaushalya Infrastructure (supra)* in support of the said proposition.
46. Even upon a repeated reading of the said judgment, comprised of about ten paragraphs, I fail to tint myself in the hue of the respondents' argument. The said judgment does not lay down a blanket proposition of law that in *no* case, the adjudication under Section 8 would not be nullified due to

invalidation of the order of provisional attachment under Section 5 of the PMLA. Rather, in paragraph 4 thereof, it is held that, going by the scheme of Sections 5 and 8 of the PMLA, the fact that the petitioner has succeeded before the High Court, does not *per se* result in nullifying the adjudication proceedings which, nevertheless, can proceed and need to be taken to its logical end by the Adjudicating Authority in accordance with law. An important factor, which distinguishes the said case from the present one, is that the matter was remanded by the High Court to the appropriate authority for passing a fresh order of provisional attachment, by quashing the impugned order on the technical ground of non-disclosure of sufficient reasons in the order under Section 5 of the PMLA but mere quotation by the authority of the provisions of law. The merits of the order, as specifically observed by the Supreme Court while upholding the High Court decision, were not opined on and was to be dealt with by the adjudicating authority or the appropriate authority, as the case may be.

47. The phrase "*per se*", as the Dictionary says, means "of itself" or "in itself" or "by itself", as one may put it. By no means can the said expression be interpreted to be the converse. In *M/s Kaushalya*, where the provisional attachment order was quashed

not on merits but on the technical ground of non-disclosure of proper reasons, despite the relevant provisions of law having been quoted, and was consequently remanded to the appropriate authority for passing a fresh order, the Supreme Court deemed it fit to observe that the quashing of the Section 5 order *per se* did not invalidate the Section 8 adjudication. It was, however, specifically iterated by the Supreme Court, while doing so, that the Court had not opined on the merits of the issues.

48. As distinguished from the said case, in the present case, the entire premise and legal justification of the executive action in respect of the property-in-question is vitiated and, thus, nullified in view of the same being in palpable over-exercise of jurisdiction by the respondent authorities, at least inasmuch as the immovable properties are concerned.
49. Thus, the ratio of *M/s Kaushalya* is not applicable here at all. Since the provisional attachment order in respect of the immovable property itself, *vis-à-vis* the alleged money laundering, has been held hereinabove to be patently *de hors* jurisdiction, the said portion of the order under Section 5 (1) has a fair chance of being set aside on merit. As a necessary corollary thereof, the consequential proceeding and adjudication under Section 8 of the PMLA regarding the self-same property and alleged

crime and on the self-same grounds stands vitiated and is required to be quashed as well.

50. In this context, with utmost respect, we may remind ourselves of the subtle distinction between Section 5(5) on the one hand and Sections 17(4) and 18 (10) on the other, any of which may be the trigger to set in motion a proceeding under Section 8 of the PMLA.
51. While the latter two provisions envisage filing of an application requesting either for retention or continuation of the freezing of seized records or property, Section 5(5) contemplates filing of a complaint stating the facts of *such* attachment before the Adjudicating Authority by the Director or other officer who *provisionally attaches any property under sub-section (1) of Section 5*.
52. Whereas, for invocation of Sections 17(4) and 18 (10), the property or records may, in the perception of the authorities, be “*useful for or relevant to*” any proceedings under the PMLA, in the case of Section 5(5), the standard is much stricter, as the complaint, unlike the applications contemplated in the other two provisions, relates specifically to “*the facts of such attachment*”, in other words, the attachment envisaged under Section 5(1).
53. Hence, the effect of a quashing on technical ground and consequential remand, as in *M/s Kaushalya (supra)*, and that of prospective setting aside of the

provisional order of attachment under Section 5 (1) on merits (hence, no question of remand arises), with regard to the provisional attachment of immovable property, as in the present case, on a proceeding or adjudication under Section 8 of the PMLA stand on entirely different footings. Thus, an ultimate quashing of a portion of the provisional attachment order under Section 5 (1) itself, with regard to a portion of the immovable property, would nullify the very premise of any resultant proceeding or adjudication under Section 8.

54. For the reasons stated above, it is held that the petitioners have made out a strong *prima facie* triable case to go for final hearing in the writ petition, at least as far as the immovable properties of the petitioner no.1 is concerned. Thus, the interim prayers made in WPA No. 17513 of 2022 are partially granted, to the extent as indicated below.
55. The respondents shall remain restrained by an order of injunction from taking any coercive action pursuant to or in implementation or furtherance of the portions of the impugned order of provisional attachment dated March 31, 2022 and the impugned show cause notice dated May 5, 2022 which concern the *land admeasuring 25.39 acres at Fuleswar in J.L. No. 108, R.S. No. 2277 of the petitioner no. 1-company (as mentioned in Serial No. 1 of Table 8 of the*

impugned order dated March 31, 2022), till disposal of the writ petition. In the event any adjudication has been arrived at under Section 8 of the PMLA before passing of the present order but after filing of the writ petition, the respondents shall remain restrained from acting on the same or taking any coercive action on the same insofar as the immovable properties of the petitioner no. 1-company is concerned.

56. However, it is made clear that insofar as the 1793 shares of the petitioner-company (1025 in the name of Mahesh Kumar Kejriwal and 768 in the name of Alka Kejriwal), as specifically stipulated in Table No. 7 of the impugned order dated March 31, 2022 under Section 5 (1) of the PMLA are concerned, and the office room purportedly standing in the name of Mahesh Kumar Kejriwal is concerned, as mentioned in Serial no. 2 of Table 8 of the impugned order [being Office Room No. 12, measuring about 612.49 sq. ft. (super built-up) approximately and False Ceiling on the 5th Floor of the building situated at Premises No. 12A, N.S. Road, Kolkata – 700 001] is concerned, nothing in this order shall prevent the respondents from acting in terms of and/or in pursuance or implementation of the impugned order and show cause notice and/or of any adjudication under Section 8 of the PMLA.

57. The respondents shall file their affidavit(s)-in-opposition by November 11, 2022. affidavit(s)-in-reply within November 25, 2022. The matter shall be enlisted for final hearing on November 28, 2022.
58. Parties shall act on the server copy of this order without insisting upon prior production of a certified copy for the purpose of compliance.

(Sabyasachi Bhattacharyya, J.)

Later

After the above order is passed, it is pointed out by learned counsel for the respondent no.2 that in the event the petitioners alienate the land standing in the name of the respondent no.1-company, regarding which the respondent no.2 has been restrained from proceeding in accordance with the order under Section 5 or under Section 8 of the PMLA Act, in the event the petitioners transfer the said property or deal with the same in the meantime, the ultimate remedy, in the event this court holds in final hearing that the said land can also be a subject-matter of the action of the respondent no.2, shall be frustrated. As such, it is submitted that the petitioners be restrained from transferring, alienating and/or encumbering the said property till disposal of the writ petition.

Upon hearing learned counsel for the parties, such prayer appears to be justified in the context of the

pendency of the writ petition even on the question as to whether the rigours of Sections 5 and 8 of the PMLA apply to the said land standing in the name of the petitioner-company.

Accordingly, the petitioners shall maintain *status quo* in respect of the said land regarding which the interim order has been passed till disposal of the writ petition.

It is made clear that in the event any encumbrance has already been created in the meantime subsequent to the filing of the writ petition, the same will be subject to and abide by the result of the writ petition.

(Sabyasachi Bhattacharyya, J.)