

Reserved on : 20.02.2025
Pronounced on : 07.03.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.1132 OF 2025

BETWEEN:

SMT. PARVATHI
AGED ABOUT 61 YEARS,
W/O SRI SIDDARAMAIAH,
RESIDING AT NO. 206, PRASIDDHA,
16TH CROSS, MC LAYOUT,
VIJAYANAGARA,
BENGALURU – 560 040.

PRESENTLY RESIDING AT 'CAUVERY',
KUMARA KRUPA ROAD,
BENGALURU – 560 001.

... PETITIONER

(BY SRI SANDESH CHOUTA, SR.ADVOCATE FOR
SRI KARTHIK NATESHA AND
MS.SANYA MALLI, ADVOCATES
SRI VIKRAM HUILGOL, SR.ADVOCATE FOR
SRI SAMRUDH HEGDE. ADVOCATE)

AND:

DIRECTORATE OF ENFORCEMENT
REPRESENTED BY ITS

ASSISTANT DIRECTOR,
BENGALURU ZONAL OFFICE,
3RD FLOOR, BLOCK 'B',
BMTc BUILDING, K.H.ROAD,
BENGALURU – 560 027.

... RESPONDENT

(BY SRI ARAVIND KAMATH, ADDL.SGI A/W
SRI MADHUKAR DESHPANDE, SPL.PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BHARATIYA NAGARK SURAKSHA SANHITA, 2023 PRAYING TO a) QUASH THE INVESTIGATION IN ECIR BEARING F.NO.BGZO/25/2024 REGISTERED BY THE RESPONDENT AGAINST THE PETITIONER ARISING OUT OF THE PREDICATE OFFENCE IN CR.NO.11/2024, REGISTERED BY THE LOKAYUKTHA POLICE; b) QUASH THE SUMMONS ISSUED U/S 50 OF PMLA VIDE NO.PMLA/SUMMON/BGZO/2025/2809/8497 DTD 03.01.2025 AND VIDE NO.PMLA/SUMMON/BGZO/2025/2903 DTD 24.01.2025 TO THE PETITIONER HEREIN ANNEXURE A AND B ISSUED BY THE RESPONDENT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.02.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.2 in Crime No.11 of 2024 is standing at the doors of this Court challenging registration of Enforcement Case Information Report ('ECIR' for short) against the petitioner arising out of predicate offence in Crime No.11 of 2024 registered by the Karnataka Lokayukta Police.

2. Shorn of unnecessary details, facts in brief germane are as follows:-

The petitioner is the wife of the Chief Minister of the State of Karnataka. Complaints come to be registered before the competent Court invoking Section 200 of the Cr.P.C., against five accused. Accused No.1 was depicted to be the Chief Minister of the State of Karnataka, accused No.2 is the present petitioner and three other accused. Approval as obtaining under Section 17A of the Prevention of Corruption Act was sought from the hands of the Governor to investigate into the alleged crime against the Chief

Minister of the State of Karnataka. The Governor, in terms of his order, grants approval as obtaining under Section 17A of the Prevention of Corruption Act, permitting investigation into the allegations against the Chief Minister and his family. The said grant of approval comes to be challenged before this Court in Writ Petition No.22356 of 2024. This Court by its order dated 24-09-2024 negatives the said challenge and affirms grant of approval by the Governor to investigate into the allegations.

3. Pursuant to the dismissal of the challenge as afore-noticed, the concerned Court directs registration of a First Information Report ('FIR') to investigate into the offence as obtaining under Section 156(3) of the Cr.P.C. The investigation is directed to be conducted by the Police wing of the Karnataka Lokayukta. Therefore, FIR in Crime No.11 of 2024 comes to be registered against the Chief Minister, the present petitioner and others. The issue in the *lis* does not pertain to the merit of the crime so registered in Crime No.11 of 2024. Four days after registration of crime, two events happen on the said day i.e., on 01-10-2024. On 01-10-2024 the present petitioner who was the recipient of

fourteen sites from Mysore Urban Development Authority ('MUDA' for short) as compensation for acquisition of land belonging to the petitioner had returned those sites to MUDA and a deed of cancellation of allotment is executed on the same day. On the said day, the impugned ECIR comes to be registered by the Enforcement Directorate. After registration of ECIR, summons comes to be issued against the petitioner directing appearance before the Enforcement Directorate in terms of summons dated 3-01-2025. It is at that juncture the petitioner knocks at the doors of this Court calling in question registration of crime and consequent act of issuance of summons under Section 50 of the Prevention of Money Laundering Act, 2002 ('the Act' for short).

4. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner, and Sri Arvind Kamath, learned Additional Solicitor General of India appearing for the respondent.

5. The learned senior counsel for the petitioner would take this Court through the documents appended to the petition and seeks to demonstrate that the action of the respondent/

Enforcement Directorate is laced with *mala fides*, as ECIR comes to be registered within four days of registration of crime in Crime No.11 of 2024. Even before determination in Crime No.11 of 2024 where the petitioner along with others was alleged of guilty of offences; the guilty of offences he would mean the filing of charge sheet in the predicate offence i.e., Crime No.11 of 2024 soon after registration of the crime in which the petitioner was named as accused No.2, the petitioner who was the recipient of 14 sites from the hands of MUDA surrenders those sites and surrendering is accepted and a deed of cancellation of allotment is also executed. On the same day springs the impugned ECIR.

5.1. It is the submission of the learned senior counsel that as on the date of registration of ECIR, the petitioner was not even in possession of the alleged proceeds of crime. It is his submission that the land belonging to the petitioner, which was gifted by accused No.3 in the year 2005, is acquired by MUDA. Against the said acquisition, the petitioner becomes entitled in terms of law for grant of adequate compensation. She was compensated by allotment of 14 sites. This becomes the subject matter of huge hue

and cry and the Governor grants approval to investigate into the offence. The sites are surrendered. The petitioner is no longer in possession, enjoyment and usage of the said sites. Therefore, there cannot be an offence under Section 3 of the Act is what is submitted by the learned senior counsel. It is his further submission that the Enforcement Directorate should await the decision in the predicate offence to come to conclude that there is *prima facie* case of money laundering and there cannot be a parallel investigation. In all, the crux of the submission is that the petitioner is neither in possession, enjoyment or usage of the alleged proceeds of crime. He would submit that it is not even proceeds of crime, as it was compensation granted in terms of law by a statutory authority against acquisition of land of the petitioner. This would not become proceeds of crime is what the learned senior counsel would submit. On the aforesaid submission, the learned senior counsel seeks quashment of entire proceedings.

6. Per contra, the learned Additional Solicitor General would refute the submissions in contending that the petitioner did hold 14 sites. In the affidavit during elections, the husband of the

petitioner, the present Chief Minister claims that he is the owner of 14 sites. Therefore, it is his submission that those sites were in possession of the petitioner. But, for registration of crime they would not have been surrendered and the mere fact that they have been surrendered is itself an admission that it was proceeds of crime. This would not take away the investigation against the petitioner under the Act in terms of ECIR so registered. The learned Additional Solicitor General would further contend that what is challenged is summons. Summons issued under Section 50 of the Act need not be issued only against an accused. It can be issued to summon a witness or any person related to ECIR. Therefore, *per se*, it cannot be challenged is his submission.

7. The learned senior counsel for the petitioner joining issue would contend that he has challenged entire registration of ECIR and summons issued in furtherance of registration of ECIR. If ECIR goes the summons would also go. It is his further submission that summons under Section 50 can be issued only after determining something that is proceeds of crime and the money trail leading to any person who is connected with the proceedings of crime. He

would submit that none of these facts are obtaining in the case at hand and, therefore, seeks quashment of entire proceedings.

8. Both the learned senior counsel and the learned Additional Solicitor General have placed reliance on plethora of judgments of the Apex Court and of different High Courts, all of which would bear consideration *qua* their relevance in the course of the order.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is:

“Whether the petitioner should be permitted to be investigated into on the impugned ECIR?”

10. The afore-narrated facts are not in dispute. They are a matter of record. Pursuant to the aforesaid registration of crime which happens on 27-09-2024 two subsequent developments emerge. The Enforcement Directorate registers an ECIR in ECIR F.No.BGZO/25/2024. The ECIR comes to be registered on

01-10-2024. A little walk in the history of the reason and registration of predicate offence in Crime No.11 of 2024 and consequent registration of impugned ECIR is necessary to be noticed. The petitioner, as observed hereinabove, is the wife of the present Chief Minister of the State of Karnataka. Accused No.3, her brother acquires certain lands which would come within the precincts of MUDA in the year 2004, having purchased them from accused No.4 one Devaraju. Six years after the purchase, accused No.3, the brother-in-law of the Chief Minister gifts the property to the present petitioner, his sister. The gift deed is in subsistence. MUDA is said to have acquired the property of 3 acres and 16 guntas which belonged to the petitioner.

11. Against the said acquisition, the petitioner registers a claim before MUDA for grant of compensation. MUDA assessed the compensation and allots 14 sites in lieu of compensation for the act of acquisition of land of the petitioner which was 3.16 acres. The value of 14 sites was assessed to be ₹56 crores. Based upon the said grant of compensation, investigation was permitted in Crime

No.11 of 2024 in terms of registration of crime on 27-09-2024. Four days thereafter, the petitioner who was in possession of 14 sites as compensation from MUDA surrenders those sites to the Authority. The surrendering of sites on 01-10-2024 is accepted by the Commissioner, MUDA and allotment stands cancelled by execution of a deed of cancellation. The deed of cancellation reads as follows:

**"NOW THIS DEED OF CANCELLATION WITNESSETH, AS
FOLLOWS:**

1. The First Party hereby unconditionally and irrevocably surrenders to the Second Party- Authority all rights, title, and interest in the Schedule Property.
2. The First Party hereby confirms that she is voluntarily surrendering peaceful and vacant possession of the Site to the Second Party-Authority and have no further claims or demands regarding the Schedule Property.
3. The Second Party-Authority agrees that upon execution of this Deed of Cancellation, the Sale of the Schedule Property to the First Party shall stand cancelled, and the Second Party-Authority shall be free to deal with the Site in any manner it deems fit.
4. The First Party has wholeheartedly out of her own free will and accord, without any undue influence, threat or force and without any monetary consideration whatsoever is surrendering the Schedule Property to the Second Party- Authority.
5. The First Party on this day by way of this deed has absolutely transferred all rights, title, interest and possession of the schedule property to Second Party-Authority.

6. The Second Party shall be entitled to enjoy and deal with the schedule property and all that comes with it, in any manner it deems fit and shall enjoy the schedule property as its rightful owners.
7. The First Party has not done or knowingly suffered any act, deed or thing whereby the said property may be encumbered, effected or impeached in title or otherwise. The First Party hereby declares that the property hereby surrendered is not subject to any lien, encumbrance, charge, maintenance claims or attachment of any court.
8. The First Party has not bequeathed the Schedule Property in favor of any person.
9. The expenses incurred towards stamp duty, registration and execution of this deed have been exclusively borne by the First Party

SCHEDULE PROPERTY

All that piece and parcel of residential site bearing No. 25 formed in Vijayanagar 3rd Stage C Block Layout, Mysuru measuring **East to West 24.00 Meters North to South 15.00 Meters** totally measuring 360.00 Square Meters and bounded on the

East by	:	Road
West by	:	Site No. 89
North by	:	Site No.26
South by	:	Site No. 24"

Pursuant to the aforesaid deed of cancellation comes about the order dated 01-10-2024. The order accepting the surrender of the sites reads as follows:

“ಆಯುಕ್ತರು, ಮೈಸೂರು ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ, ಮೈಸೂರು ರವರ ನಡವಳಿಕೆಗಳು:

ವಿಷಯ: ಮೈಸೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಕೆಸರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.464 ರಲ್ಲಿನ 3-16 ಎಕರೆ ಜಮೀನನ್ನು ಪ್ರಾಧಿಕಾರವು ಉಪಯೋಗಿಸಿಕೊಂಡಿರುವ ಬಾಬು ಭೂಮಾಲೀಕರಿಗೆ ನೀಡಿರುವ 14 ನಿವೇಶನಗಳನ್ನು ಹಿಂಪಡೆಯುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: 1. ಅಧಿಕೃತ ಜ್ಞಾಪನ ಪತ್ರ ಸಂಖ್ಯೆ:ಎಲ್‌ಸಿ40/97-98, ದಿನಾಂಕ:30.12.2021

2. ಅರ್ಜಿದಾರರಾದ ಶ್ರೀಮತಿ, ಪಾರ್ವತಿ ಕೋಂ ಸಿದ್ಧರಾಮಯ್ಯ ರವರ ಮನವಿ ಪತ್ರ
ದಿ:01.10.2024

ಪ್ರಸ್ತಾವನೆ:

ಮೈಸೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಕೆಸರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.464 ರಲ್ಲಿನ 3-16 ಎಕರೆ ಜಮೀನನ್ನು ಸಂಖ್ಯೆ: ನಅಇ 557 ಅಪ್ರಾಪ್ತಿ 96 ದಿ:20.08.1997 ರ ಅಧಿಸೂಚನೆಯಂತೆ ದೇವನೂರು 3ನೇ ಹಂತ ಬಡಾವಣೆ, ಉದ್ದೇಶಕ್ಕಾಗಿ ಅಂತಿಮ ಅಧಿಸೂಚನೆ ಹೊರಡಿಸಲಾಗಿತ್ತು. ದಿ:31.10.1997 ರಂದು ಅವಾರ್ಡ್ ನಿರ್ಣಯಿಸಲಾಗಿತ್ತು, ನಂತರದಲ್ಲಿ ದಿ:15.02.1999, ರಂದು ಈ ಜಮೀನಿಗೆ ರೂ.3,24,700/- ಗಳಿಗೆ ವೈಯಕ್ತಿಕ ಅವಾರ್ಡ್, ನಿರ್ಣಯಿಸಲಾಗಿರುತ್ತದೆ. ನಂತರದಲ್ಲಿ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ನಅಇ 499 ಅಪ್ರಾಪ್ತಿ 96 ದಿ:18.05.1998 ರಂತೆ ಭೂಸ್ವಾಧೀನ ಕ್ರಮದಿಂದ ಕೈಬಿಡಲಾಗಿರುತ್ತದೆ.

ಭೂಸ್ವಾಧೀನ ಕ್ರಮದಿಂದ ಕೈಬಿಟ್ಟ ಪ್ರಸ್ತಾವಿತ ಸರ್ವೆ ನಂಬರ್ ಜಮೀನಿನ ಪೂರ್ಣ ವಿಸ್ತೀರ್ಣವನ್ನು ದೇವನೂರು 3ನೇ ಹಂತ, ವಸತಿ ಬಡಾವಣೆ ನಿರ್ಮಾಣ ಉದ್ದೇಶಕ್ಕಾಗಿ ರಸ್ತೆ, ಉದ್ಯಾನವನ ಹಾಗೂ ವಿವಿಧ ನಿವೇಶನಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡಲಾಗಿರುತ್ತದೆ.

ಭೂಮಾಲೀಕರಾದ ಶ್ರೀಮತಿ ಪಾರ್ವತಿ ಕೋಂ. ಸಿದ್ಧರಾಮಯ್ಯ ರವರು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಅರ್ಜಿ ಸಲ್ಲಿಸಿ, ಪ್ರಸ್ತಾವಿತ ಜಮೀನನ್ನು ಪ್ರಾಧಿಕಾರವು ಉಪಯೋಗಿಸಿಕೊಂಡಿರುವ ಸಂಬಂಧ ತಮಗೆ ಪರಿಹಾರವನ್ನು ನೀಡುವಂತೆ ಕೋರಿರುತ್ತಾರೆ.

ಆಯುಕ್ತರು, ಮೈಸೂರು ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ, ಮೈಸೂರು ರವರು ಮೈಸೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ಕೆಸರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.464 ರಲ್ಲಿನ 3-16 ಎಕರೆ ಜಮೀನನ್ನು ಪ್ರಾಧಿಕಾರವು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳದೇ ಉಪಯೋಗಿಸಿಕೊಂಡಿರುವ ಬಾಬು ಶೇ.50:50 ರ ಅನುಪಾತದಲ್ಲಿ ಭೂಮಾಲೀಕರಿಗೆ 38,284 ಚ.ಅಡಿಗಳಿಗೆ ಸಮನಾಗಿ ನಿವೇಶನ ಪರಿಹಾರ ರೂಪದಲ್ಲಿ, ಮಂಜೂರು ಮಾಡಿ ಉಲ್ಲೇಖ (1) ರಂತೆ ಅಧಿಕೃತ ಜ್ಞಾಪನ ಹೊರಡಿಸಲಾಗಿರುತ್ತದೆ.

ಸದರಿ ಅಧಿಕೃತ ಜ್ಞಾಪನದನ್ವಯ ಭೂಮಾಲೀಕರಿಗೆ ವಿಜಯನಗರ 3ನೇ ಹಂತ & 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್ ಬಡಾವಣೆಗಳಲ್ಲಿ ಈ ಕೆಳಕಂಡ ನಿವೇಶನಗಳನ್ನು ದಿ:05.01.2022 ರಂದು ಹಂಚಿಕೆ ಮಾಡಲಾಗಿರುತ್ತದೆ.

ಕ್ರ.ಸಂ.	ಬಡಾವಣೆ	ನಿವೇಶನ ಸಂಖ್ಯೆ	ಅಳತೆ (ಮೀ.ಗಳಲ್ಲಿ)
1.	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಜಿ' ಬ್ಲಾಕ್	5	12 * 18
2	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಸಿ' ಬ್ಲಾಕ್	25	15 * 24
3	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಇ' ಬ್ಲಾಕ್	213	15 * 24
4	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಇ' ಬ್ಲಾಕ್	214	15 * 24
5	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಇ' ಬ್ಲಾಕ್	215	15 * 24
6	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಇ' ಬ್ಲಾಕ್	216	15 * 24
7	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಡಿ' ಬ್ಲಾಕ್	331	12 * 18
8	ವಿಜಯನಗರ 3ನೇ ಹಂತ 'ಡಿ' ಬ್ಲಾಕ್	332	12 * 18
9	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	11189	12 * 18
10	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	10855	12 * 18
11	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	5108	9 * 12
12	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	5085	9 * 12
13	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	12065	12 * 15
14	ವಿಜಯನಗರ 4ನೇ ಹಂತ 2ನೇ ಫೇಸ್	12068	12 * 15

ಮೇಲ್ಕಂಡ ನಿವೇಶನಗಳಿಗೆ ದಿ:13.01.2022 ರಂದು ಭೂಮಾಲೀಕರಿಗೆ ಕ್ರಯ ಪತ್ರಗಳನ್ನು ನೋಂದಾಯಿಸಲಾಗಿರುತ್ತದೆ. ಮುಂದುವರೆದು ಸದರಿ ನಿವೇಶನಗಳಿಗೆ ದಿ:21.01.2022 ರಂದು ನಿವೇಶನ ಖಾತಾ ಮತ್ತು ಕಂದಾಯ ಪತ್ರಗಳನ್ನು ನೀಡಲಾಗಿರುತ್ತದೆ.

ಶ್ರೀಮತಿ ಪಾರ್ವತಿ ಕೋಂ ಸಿದ್ಧರಾಮಯ್ಯ ರವರು ದಿನಾಂಕ:01.10.2024 ರಂದು ಮೈಸೂರಿನ ಕೆಸರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.464 ರಲ್ಲಿನ 3-16 ಎಕರೆ ಜಮೀನನ್ನು ಪ್ರಾಧಿಕಾರವು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳದೇ ಉಪಯೋಗಿಸಿಕೊಂಡಿದ್ದಕ್ಕಾಗಿ ಪರಿಹಾರದ ಬದಲಾಗಿ ವಿಜಯನಗರ 3 & 4ನೇ ಹಂತದಲ್ಲಿ ಮಂಜೂರು ಮಾಡಲಾಗಿರುವ 14 ನಿವೇಶನಗಳ ಕ್ರಯ ಪತ್ರಗಳನ್ನು ರದ್ದುಗೊಳಿಸಿ ಹಿಂದಿರುಗಿಸಲು ಬಯಸುತ್ತಾ, ತಮಗೆ ನೀಡಿದ ಪರಿಹಾರದ ನಿವೇಶನಗಳನ್ನು ಸ್ವ-ಇಚ್ಛೆಯಿಂದ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಮರಳಿ ಹಸ್ತಾಂತರಿಸಲು ಉಲ್ಲೇಖ (2)ರಂತೆ ಅರ್ಜಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ.

ಈ ಮೇಲ್ಕಂಡ ಎಲ್ಲಾ ಅಂಶಗಳನ್ನು ಪರಿಗಣಿಸಿ ಪ್ರಾಧಿಕಾರಕ್ಕೆ 14 ನಿವೇಶನಗಳನ್ನು ಹಿಂಪಡೆಯುತ್ತಿರುವುದರಿಂದ ಅರ್ಥಿಕವಾಗಿ ಲಾಭ ಉಂಟಾಗುತ್ತದೆ ಎಂಬ ಅಂಶದೊಂದಿಗೆ ಈ ಕೆಳಕಂಡಂತೆ ಆದೇಶಿಸಿದೆ.

ಆದೇಶ

ಮೈಸೂರು/ಖತ-3/ಸಂಖ್ಯೆ.786/2024-25

ದಿ:01.10.2024

ಮೇಲ್ಕಂಡ ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವಂತೆ ಮೈಸೂರಿನ ಕೆಸರೆ ಗ್ರಾಮದ ಸರ್ವೆ ನಂ.464 ರಲ್ಲಿನ 3-16 ಎಕರೆ ಜಮೀನನ್ನು ಪ್ರಾಧಿಕಾರವು ಭೂಸ್ವಾಧೀನಪಡಿಸಿಕೊಳ್ಳದೇ ಉಪಯೋಗಿಸಿಕೊಂಡಿದ್ದಕ್ಕಾಗಿ ಪರಿಹಾರದ ಬದಲಾಗಿ ಶ್ರೀಮತಿ, ಪಾರ್ವತಿ ಕೋಂ ಸಿದ್ಧರಾಮಯ್ಯ ರವರ ಹೆಸರಿಗೆ ಮಂಜೂರಾಗಿರುವ 14. ನಿವೇಶನಗಳನ್ನು ಸ್ವ-ಇಚ್ಛೆಯಿಂದ ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಒಪ್ಪಿಸಲು/ಹಿಂದಿರುಗಿಸಲು ಕೋರಿರುವುದರಿಂದ ಸದರಿಯವರ ಮನವಿಯನ್ನು ಪರಿಗಣಿಸುತ್ತಾ, ಮಂಜೂರಾತಿ ಪತ್ರದಲ್ಲಿ ಸರ್ಕಾರದ ಅಧಿಸೂಚನೆ ಸಂಖ್ಯೆ: ಯುಡಿಡಿ/8ಟಿಟಿಪಿ/2014, ದಿ:11.02.2015 ಅನ್ನು ನಮೂದಿಸಿ ಶೇ.50:50 ಅನುಪಾತದಲ್ಲಿ ದರ ರಹಿತವಾಗಿ ನಿವೇಶನಗಳನ್ನು ಹಂಚಿಕೆ ಮಾಡಲಾಗಿದ್ದು, ಮಂಜೂರಾತಿದಾರರಿಗೆ ನೀಡಿರುವ ಕ್ರಯ ಪತ್ರದಲ್ಲಿ (ಭೂಮಿಯನ್ನು ಸ್ವ-ಇಚ್ಛೆಯಿಂದ ಬಿಟ್ಟುಕೊಡುವುದಕ್ಕಾಗಿ ಪ್ರೋತ್ಸಾಹದಾಯಕ ಯೋಜನೆ) ನಿಯಮಗಳು 1991 ರಂತೆ ಹಂಚಿಕೆ ಮಾಡಿರುವುದಾಗಿ ನಮೂದು ಮಾಡಲಾಗಿರುತ್ತದೆ.

ಕರ್ನಾಟಕ ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ (ಭೂಮಿಯನ್ನು ಸ್ವ-ಇಚ್ಛೆಯಿಂದ ಬಿಟ್ಟುಕೊಡುವುದಕ್ಕಾಗಿ ಪೋಲಗದಾಯಕ ಯೋಜನೆ) ನಿಯಮಗಳು 1991 ಕಲಂ 8 ರಲ್ಲಿ "ಹಂಚಿಕೆ ಪಡೆದವನು, ಹಂಚಿಕೆಯ ತರುವಾಯ ಯಾವುದೇ ಕಾಲದಲ್ಲಿ, ಪ್ರಾಧಿಕಾರದಿಂದ ತನಗೆ ಹಂಚಿಕೆಯಾದ ನಿವೇಶನವನ್ನು ಸ್ವಇಚ್ಛೆಯಿಂದ ಬಿಟ್ಟುಕೊಡಬಹುದು ಹಾಗೇ ಬಿಟ್ಟುಕೊಟ್ಟ ಮೇಲೆ ಸಾಧ್ಯವಾದಷ್ಟು ವಿಳಂಬವಿಲ್ಲದೆ, ಸದರಿ ನಿವೇಶನದ ಬೆಲೆಯ ಸಂಬಂಧದಲ್ಲಿ ಹಂಚಿಕೆ ಪಡೆದವನು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಸಂದಾಯ ಮಾಡಿದ ಎಲ್ಲಾ ಮೊಬಲಗನ್ನು ಸಂದಾಯ ಮಾಡಲು" ಅವಕಾಶ ಕಲ್ಪಿಸಿರುವುದರಿಂದ ಸದರಿ ನಿಯಮಗಳಂತೆ ಹಾಗೂ ಏಕ ಸದಸ್ಯ ಸಮಿತಿಯ ವರದಿ/ಲೋಕಾಯುಕ್ತ ತನಿಖೆ ಹಾಗೂ ಇನ್ನಿತರೆ ಯಾವುದೇ ತನಿಖಾ ಸಂಸ್ಥೆಯ ವರದಿ/ಆದೇಶಗಳ ಷರತ್ತಿಗೊಳಪಟ್ಟು, ಭೂಮಾಲೀಕರು ಸ್ವಇಚ್ಛೆಯಿಂದ ಬಿಟ್ಟುಕೊಟ್ಟ 14 ನಿವೇಶನಗಳ ಮಂಜೂರಾತಿಯನ್ನು ರದ್ದುಪಡಿಸಿ ಆದೇಶಿಸಿದೆ.

ಸದರಿ ನಿವೇಶನಗಳನ್ನು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಎಲ್ಲಾ ನೋಂದಾಯಿತ ದಾಖಲೆಗಳೊಂದಿಗೆ ನೋಂದಣಿ ಸಂಬಂಧ ತಗಲುವ ವೆಚ್ಚವನ್ನು ಭೂಮಾಲೀಕರೇ ಭರಿಸುವ ಷರತ್ತಿಗೊಳಪಟ್ಟಿರುತ್ತದೆ.

ಸಹಿ/-

ಆಯುಕ್ತರು

ಮೈಸೂರು ನಗರಾಭಿವೃದ್ಧಿ ಪ್ರಾಧಿಕಾರ

ಮೈಸೂರು"

In terms of the afore-quoted deed of cancellation and acceptance of the same by the order with the surrender of sites, the allotment or the proceeds of allotment by way of its value was no longer with

the petitioner. Yet another instance happened on the same day i.e., 01-10-2024. The Enforcement Directorate registers Enforcement Case Information Report, the impugned ECIR on the strength of the petitioner being accused No.2 in the predicate offence i.e., Crime No.11 of 2024. The Directorate seeks to conduct investigation and later issued summons to the petitioner invoking power under Section 50 of the Act to enquire into the issue of money laundering against the petitioner. Whether holding of sites and their return would amount to proceeds of crime for the Enforcement Directorate to initiate proceedings and issue summons is what is required to be noticed, for which it becomes necessary to consider the genesis of the Act and certain provisions which are germane.

12. The Prevention of Money Laundering Act, 2002 has its roots in certain International Conventions and Treaties to which India was a signatory. These conventions urge all the member states who have ratified those conventions to enact laws to combat money laundering in their respective nations. This was elaborated in the Vienna convention of 20-12-1988. The reason to control money laundering was primarily aimed to plug in illicit traffic in

Narcotic Drugs and Psychotropic Substances. Deliberations galore later and the Act is promulgated in the year 2002. Sections, 2, 3, 5 and 50 of the Act are necessarily to be considered for a resolution of the issue in the *lis*. They read as follows:

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

- (a) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of Section 6;
- (b) "Appellate Tribunal" means the Appellate Tribunal referred to in Section 25;
- (c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of Section 49;
- (d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;
- (da) "authorised person" means an authorised person as defined in clause (c) of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);]
- (e) "banking company" means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in Section 51 of that Act;
- (f) "Bench" means a Bench of the Appellate Tribunal;
- (fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;]

- (g) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (h) "chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in Section 2 of the Chit Funds Act, 1982 (40 of 1982);
- (ha) "client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;]
- (i) "co-operative bank" shall have the same meaning as assigned to it in clause (dd) of Section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);
- (ia) "corresponding law" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;
- (ib) "dealer" has the same meaning as assigned to it in clause (b) of Section 2 of the Central Sales Tax Act, 1956 (74 of 1956);]
- (j) "Deputy Director" means a Deputy Director appointed under sub-section (1) of Section 49;
- (k) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of Section 49;
- (l) "financial institution" means a financial institution as defined in clause (c) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;

- (m) "housing finance institution" shall have the meaning as assigned to it in clause (d) of Section 2 of the National Housing Bank Act, 1987 (53 of 1987);
- (n) "intermediary" means,—
 - (i) a stock-broker, ¹²[* * *], share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under Section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992); or
 - (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 (74 of 1952) or any member of such association; or
 - (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
 - (iv) a recognised stock exchange referred to in clause (f) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);]
- (na) **"investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;**
- (o) "Member" means a Member of the Appellate Tribunal and includes the Chairperson;
- (p) **"money-laundering" has the meaning assigned to it in Section 3;**
- (q) "non-banking financial company" shall have the same meaning as assigned to it in clause (f) of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (r) "notification" means a notification published in the Official Gazette;

(ra) "offence of cross border implications", means—

- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person ¹⁶[transfers in any manner] the proceeds of such conduct or part thereof to India; or
- (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-Laundering (Amendment) Act, 2009;

(rb) "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

Explanation.—For the purposes of this clause, "payment system" includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

(rc) "payment system operator" means a person who operates a payment system and such person includes his overseas principal.

Explanation.—For the purposes of this clause, "overseas principal" means,—

- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
 - (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
 - (C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]
- (s) **“person” includes—**
- (i) an individual,**
 - (ii) a Hindu undivided family,**
 - (iii) a company,**
 - (iv) a firm,**
 - (v) an association of persons or a body of individuals, whether incorporated or not,**
 - (vi) an every artificial judicial person not falling within any of the preceding sub-clauses, and**
 - (vii) an any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;**
- (sa) “person carrying on designated business or profession” means,—

- (i) a person carrying on activities for playing games of chance for case of kind, and includes such activities associated with casino;
- (ii) Inspector-General of Registration appointed under Section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;]
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;
- (sb) "precious metal" means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;
- (sc) "precious stone" means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;
- (t) "prescribed" means prescribed by rules made under this Act;
- (u) **"proceeds of crime" means 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;

Explanation.—For the removal of doubts, it is hereby clarified that “proceeds of crime” include 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; (v) “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;

Explanation.—For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

- (va) “real estate agent” means a real estate agent as defined in clause (88) of Section 65 of the Finance Act, 1994 (32 of 1994);]
- (w) “records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;
- (wa) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;]
- (x) “Schedule” means the Schedule to this Act;
- (y) “scheduled offence” means—
 - (i) the offences specified under Part A of the Schedule; or

- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
- (iii) the offences specified under Part C of the Schedule.
- (z) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of Section 43;
- (za) "transfer" includes sale-purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;
- (zb) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the ²⁶[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

***Explanation.*—For the removal of doubts, it is hereby clarified that,—**

- (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—

- (a) concealment; or**
- (b) possession; or**
- (c) acquisition; or**
- (d) use; or**
- (e) projecting as untainted property; or**
- (f) claiming as untainted property, in any manner whatsoever;**
- (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.**

... ..

5. Attachment of property involved in money-laundering.—(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

- (a) any person is in possession of any proceeds of crime; and**
- (b) 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 under this Chapter,**

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or Court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under ³²[sub-section (3)] of Section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

...

...

...

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1)

The Director shall, for the purposes of Section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a ¹¹⁷[reporting entity], and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.”

(Emphasis supplied)

Sections 2(1)(u), 3 and 50 form the fulcrum of the *lis*. Section 2(1)(u) defines proceeds of crime which would mean any property derived or obtained directly or indirectly as a result of criminal activity to a scheduled offence or the value of such property. It clarified further that holding of the property and taking it forward becomes proceeds of crime. Section 3 makes it an offence to

laundering proceeds of crime. The ingredients of proceeds of crime in the definition itself is inclusive of concealment, possession, acquisition or use and projecting or claiming it as untainted property. Section 5 deals with attachment of property involved in money laundering. Section 50 deals with powers of the authorities to issue summons for production of documents and to give evidence. The interpretation of the aforesaid provisions and their purport need not detain this court for long or delve deep into the matter.

13. A Three Judge Bench of the Apex Court in the case of **VIJAY MADANLAL CHOUDHARY v. UNION OF INDIA**¹, has in elaboration, examined threadbare the provisions of the Act. Certain paragraphs of the said judgment are necessary to be noticed and they read as follows:

“106. The “proceeds of crime” being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing

¹(2023) 12 SCC 1

with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

107. Be it noted that the definition clause includes any property derived or obtained “indirectly” as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the “property” which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression “proceeds of crime”, it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to “any property” including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition

of “proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

108. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.

109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause “proceeds of crime”, as it obtains as of now.

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113. Thus, it is clear from a bare reading of two very initial international conventions attempting to establish a world order to curb money laundering, gave a very wide interpretation to the concept of money laundering. There has been a consensus that acquisition, possession, use, concealing or disguising the illicit origin of illegitimately obtained money to evade legal consequences would be money laundering. Further, concealing and disguising too were clearly a part of money laundering and as such there was no bar or understating that pointed to the fact that there was a need to project the monies as untainted. This was obviously subject to the fundamental principles of the domestic law of the countries. However, the growth of the jurisprudence in this law did not stop or end there. As we progressed into a world equipped with the internet and into a digital age, criminals found new ways to launder and the law found new ways to tackle them.

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133. Independent of the above, we have no hesitation in construing the expression “and” in Section 3 as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone, including projecting or claiming the property as untainted property to constitute an offence of money laundering on its own. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money laundering. In other words, it is not open to read the different activities conjunctively because of the word “and”. If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act.

134. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of

proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

135. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

136. As mentioned earlier, the rudimentary understanding of “money laundering” is that there are three generally accepted stages to money laundering, they are:

136.1. Placement : which is to move the funds from direct association of the crime.

136.2. Layering : which is disguising the trail to foil pursuit.

136.3. Integration : which is making the money available to the criminal from what seem to be legitimate sources.

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143. However, in the present case we find that the Explanation only sets forth in motion to clear the mist around the main definition, if any. It is not to widen the ambit of Section 3 of the 2002 Act as such. Further, the meaning ascribed to the expression "and" to be read as "or" is in consonance with the contemporary thinking of the international community and in consonance with the Vienna and Palermo Conventions.

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150. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

151. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002

Act, enabling him to take further action under the Act in that regard.

152. Even though the 2002 Act is a complete code in itself, it is only in respect of matters connected with offence of money laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) PMLA is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

153. In other words, the authority under the 2002 Act is to prosecute a person for offence of money laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a stand-alone process.

... ..

Conclusion

382. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:

... ..

382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the

competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

(Emphasis supplied)

The Apex Court considers various contentions advanced while defining what could be the proceeds of crime. At paragraphs 96 and 97, the Apex Court notices the preamble and the reason for bringing in the Act. It is noticed that it was enacted to prevent money laundering and to provide for confiscation of property derived from such money laundering. At paragraph 99 the Apex Court considers Section 2(1)(p) which deals with money laundering and Section 2(1)(u) which defines proceeds of crime. The Apex Court then travels to Section 3 and considers what could be the process and activity of money laundering. The Apex court considers what is proceeds of crime in paragraph 106 and what would mean the purport of Section 2(1)(u). At paragraph 136 the Apex Court observes that the rudimentary understanding of money laundering is that there has to be three generally accepted stages i.e.,

placement; layering; integration. Placement would be the funds from direct association of the crime; layering would disguising the trail to foil pursuit and integration would be making the money available to the criminal from what seem to be legitimate sources. Therefore, the Apex Court hold that making tainted money into untainted money or even its projection would amount to money laundering.

14. Several High Courts have considered the purport of the Act and the afore-quoted provisions both before and after the judgement of the Apex Court in the case of **VIJAY MADANLAL CHOUDHARY**. The Apex Court in case of **NIKESH TARACHAND SHAH v. UNION OF INDIA**² has held as follows:

“....

11. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as “whosoever”, “directly or indirectly” and “attempts to indulge” would show that all persons who are even remotely involved in this offence are sought to be roped in. **An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and “proceeds**

² (2018) 11 SCC 1

of crime” is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whoever is involved as aforesaid, in a process or activity connected with “proceeds of crime” as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property.

(Emphasis supplied)

The Apex Court holds that persons responsible for money laundering is wide. Whoever directly or indirectly attempts to indulge would show that all persons who even remotely involved in the offence are sought to be rope in. Therefore, whoever actively connected with the proceeds of crime which would include concealing, possession or using such property would be guilty of the offence. The Apex Court further holds that one can be adjudged guilty only when the person involved in the process or actively connected with the proceeds of crime and the person projecting or claiming it being an untainted money. It becomes germane to notice the Division Bench judgment of the High Court of Madras in

the case of **S.SRINIVASAN v. ASSISTANT DIRECTOR, DIRECTOR OF ENFORCEMENT**³, wherein it is held as follows:

"....

29. Section 2(1)(u) defines "proceeds of crime means 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". Thus, it is relevant to consider the scope of Section 3 which provides offence of money laundering.

30. Section 3 stipulates that "whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or using and projecting it as untainted property shall be guilty of offence of money laundering".

31. The expression "money laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of explanation vide Finance (No. 2) Act, 2019, Section 3, as amended. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily

³ 2024 SCC OnLine Mad.5418

frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act. **Thus, a person who is as long as in possession and enjoyment of proceeds of crime, the PMLA can certainly be invoked. It is also submitted that the subsequent amendments made to the PMLA in respect of Section 3 of the PMLA has been upheld by the Supreme Court of India on the premise that all the said amendments are in clarificatory in nature.**

32. Therefore, mere possession of proceeds of crime would be sufficient to invoke the provisions of the PMLA. Using the proceeds of crime by itself is an offence. Since the scope of Section 3 is wider enough to cover various circumstances in order to curb the economic offences, the High Court cannot restrict its meaning so as to restrain the authorities from invoking the provisions of the PMLA.

33. Section 24 of the PMLA denotes "burden of proof". "In any proceeding relating to proceeds of crime under the PMLA in a case of a person charged with offence of money laundering under Section 3, the authority or court shall unless the contrary is proved presume that such proceeds of crime are involved in money laundering and in the case of any other person, the authority or court may presume that such proceeds of crime involved in money laundering". Therefore, the presumptions of the authorities, investigation conducted and documents collected would be sufficient to proceed against a person under the PMLA. Unless contrary is proved, presume that such proceeds of crime are involved in money laundering. Therefore, the burden of proof lies on the affected person, who in turn has to prove his innocence during the course of trial. Adjudication of those materials placed by the petitioners would be unnecessary for this Court, while dealing with the discharge petitions."

(Emphasis supplied)

The Division Bench holds whoever directly or indirectly attempts to indulge or knowingly assist a party for concealment, possession,

acquisition and using, would be guilty of possessing proceeds of crime. The Division Bench therein holds that the person had abetted the commission of crime. Therefore, the order which declined to discharge the accused therein was affirmed.

15. The High Court of Jammu and Kashmir in the case of **HILAL AHMAD MIR & ORS. V DIRECTORATE OF ENFORCEMENT DY.,⁴** elaborates on this issue and holds as follows:

"....

10. Before proceeding further in the matter, a reference to Section 2(1) (p), 2(1)(u), Section 3 and Section 4 of the Prevention of Money Laundering Act, 2002 would be also relevant, which are reproduced hereunder:

"Section 2(1)(p)

"Money-laundering" has the meaning assigned to it in Section 3.

Section 2(1) (u)

"Proceeds of crime" means 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,

⁴**CRM(M) No. 484/2024, decided on 03.01.2025**

then the property equivalent in value held within the country or abroad;

Explanation—For the removal of doubts, it is hereby clarified that "proceeds of crime" include 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 relatable to the scheduled offence;]

Section 3.

"Offence of money-laundering.—
Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 2 ["proceeds of crime" including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money laundering."

Explanation.—For the removal of doubts, it is hereby clarified that,— (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with "proceeds of crime", namely— (a) concealment; or (b) possession; or (c) acquisition; or (a) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever; (ii) the process or activity connected with "proceeds of crime" is a continuing activity and continues till such time a person is directly or indirectly enjoying the "proceeds of crime" by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

Section 4.

"Punishment for money-laundering.—
Whoever commits the offence of money-

laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine 28[* *]: Provided that where the "proceeds of crime" involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."*

What emanates from the aforesaid provisions is that in order to constitute an offence of money-laundering as defined under Section 3 (Supra) , the most important thing is that there must be an activity connected with the "proceeds of crime", which proceeds of crime in terms of the aforesaid definition would 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.

Thus, in order to constitute an offence under Section 3 of PMLA, Section 2(1)(u) is to be read together with Section 3 of PMLA to find out whether the ingredients of the offence of money-laundering are made out or not. When read so, the offence of money-laundering can said to have been committed by fulfilment of following conditions:-

- i. Scheduled offence must have been committed;*
- ii. Commission of scheduled offence must have resulted in some "proceeds of crime";*
- iii. Person accused of money-laundering must have indulged in an activity connected with such "proceeds of crime".*

It needs to be mentioned here that the activity connected with the "proceeds of crime" attributed to an accused must be the voluntary act of the accused.

....

15. It is pertinent to mention here and as has been noticed in the preceding paras as well, that during the course of investigation, land in question as also the Bank accounts of 18 land owners, in whose accounts the loan amount had been directly transferred/credited by the Bank were attached to prevent the land owners from withdrawing the money so transferred/credited and that the said attachment of the Bank accounts of the land owners became subject matter of the litigation before the Apex Court, wherein the Apex Court passed orders to facilitate the land owners the withdrawal of the said money, having been deposited/credited in their accounts in lieu of the land having been perpetually leased out in favour of the Society.

Having regard to the aforesaid position obtaining in the matter, inasmuch as the admitted facts noticed in the preceding paras, the alleged offence manifestly has not resulted in any "proceed of crime" in favour of the petitioners herein. **A-fortiori, it cannot be said that the petitioners have indulged in any activity connected with the "proceeds of crime" for unless there are "proceeds of crime", there cannot be any activity about the "proceeds of crime", in that, existence of "proceeds of crime" pursuant to the predicate offence is *sine qua non* for commission of offence of money-laundering, to be precise that if there is no money or property, a question of money-laundering would not arise.**

A reference in this regard to the judgment of the Apex Court passed in case titled as **Vijay Mananlal Choudhary and others vs. Union of India and others** reported in **2022 SCC Online SC 929** would be relevant, wherein at para 283 and 284 following has been held:-

"283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of "proceeds of crime" within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of "proceeds of crime", as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of ""proceeds of crime"". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the "proceeds of crime", action under the Act can be taken forward for attachment and confiscation of "proceeds of crime" and until vesting thereof in the Central Government, such process initiated would be a standalone process."

What emanates from the above position of law is that the Apex Court, *inter alia*, has held that in absence of "proceeds of crime", the Authority under PMLA have no jurisdiction to proceed.

16. Further perusal of the record tends to show and as has been noticed in the preceding paras, admittedly no money was transferred to the accounts of the petitioners herein, therefore, there was no occasion for the petitioners herein to indulge in any activity associated with the so called "proceeds of crime" as the money that has been released out of the sanctioned loan, which is described as the "proceeds of crime" in the complaint, had admittedly been transferred/credited directly into the accounts of the land owners and the petitioners herein had never been in possession or control of the said money, which is alleged to have been laundered. **As has been pointed out earlier, in order to constitute the offence of money-laundering, it is imperative that one should be first in possession of the "proceeds of crime" and then engage in an activity to project it as untainted property, which however, is missing in the instant case. In the instant case, "proceeds of crime" in favour of the petitioners would have arisen only had the petitioners developed the plots in the colony and sold them to earn profit in the process, in that, the said profits would have been the "proceeds of crime" and any activity related to such profits may have resulted in money-laundering, which stage in the instant case has not reached.**

The fact that the money that was transferred in the accounts of the land owners which had been attached on the premise that the same is "proceeds of crime" and was released in favour of the said land owners by the orders of the Apex Court cannot be overlooked, in that, if the said money in the accounts of the land owners was "proceeds of crime", the same would not have been ordered to be released in favour of the land owners and treating the said money in the accounts of the land owners for the purpose of making out a case of money-laundering against the petitioners herein under said circumstances cannot but said to be not only abuse of process of law, but as well an attempt to overreach the orders of the Apex Court, in that, the transaction between the land owners and the Society essentially has been treated as a genuine transaction by the Apex Court while ordering release of money in question in favour of the land owners.

17. Thus, what emanates from the above is that none of the ingredients of the offence of money-laundering against the petitioners herein is found to be existing in the present case, more so in view of the fact that an act of mortgaging the property with the Bank for securing the loan that is said to have been obtained fraudulently without following Banking rules and regulations cannot by any stretch of imagination be termed as money-laundering and that the act of the petitioners herein of having fraudulently secured loan for development and establishment of satellite township by submitting false documents, at the most makes out a case for forgery or Bank fraud."

(Emphasis supplied)

The judicial interpretation of Section 2(1)(u) and 3 of the Act is that the person should be in possession, enjoyment and usage of the property, which is alleged to be proceeds of crime projecting it to be untainted money.

16. The challenge in the case at hand, apart from the challenge to the ECIR is to the summons issued under Section 50 of the Act quoted *supra*. Submissions are made by the learned Additional Solicitor General taking this Court through several judgments of the Apex Court and that of other Courts as to whether summons can be challenged or otherwise. The contention of the learned Additional Solicitor General as noted hereinabove is that, summons cannot be challenged and there is no precedent holding that issuance of summons can be challenged and it is to be quashed. All these submissions are the ones considered by the coordinate Bench, in which the learned Additional Solicitor General himself has appeared and had projected identical submissions. Therefore, noticing the submissions and answering them all over again notwithstanding the fact that the coordinate Bench has considered and answered all those issues would only bulk this judgment. I, therefore, deem it appropriate to follow suit the findings of the coordinate Bench. The coordinate Bench in the case of **DR. NATESHA D.B. v. DIRECTORATE OF ENFORCEMENT**⁵ has held as follows:

⁵**Writ Petition No.32956 of 2024 decided on 27.01.2025**

"....

Issues:

8. After considering the arguments of the learned counsel for the parties, the following issues emerge for consideration :

- i. Whether the authorisation issued to conduct the impugned search and seizure at the residence of the petitioner on 28.10.2024 and 29.10.2024, and the consequent statement recorded under Section 17 of PMLA, 2002 suffers from lack of jurisdiction?
- ii. Whether the said impugned search and seizure and the statement recorded, is bad in law for lack of the requisite "*reason to believe*" under section 17(1) of PMLA, 2002, and is therefore, an abuse of process of law?
- iii. **Whether the impugned summons/notices issued under Section 50 of PMLA, 2002 and the various statements recorded thereunder, be sustained under the law?**
- iv. Whether, in the course of its administration and execution of the PMLA, 2002, the attachment of property under Section 5 of the Act must mandatorily precede the conduct of search and seizure under Section 17 of the said Act?"

(Emphasis supplied)

Issue No.3 is germane to be considered for resolution of the *lis*, as the petitioner in the case at hand has also been issued summons under Section 50, like the petitioner who had been issued summons in the said case. Certain findings of the coordinate Bench prior to

answering of the said issue are also necessary to be noticed. The coordinate Bench holds as follows:

"Discussion and Analysis

9. Before delving into the issues raised for consideration, it is necessary to advert to the relevant provisions of the Act.

9.1. **Section 2(1)(na)** of the PMLA, 2002, defines the term **investigation** as;

"including all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence".

9.2. **Section 2(1)(u)** of the Act defines the term **proceeds of crime** as;

"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;

Explanation.— For the removal of doubts, it is hereby clarified that "proceeds of crime" include 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 relatable to the scheduled offence".

9.3. **Section 3 of PMLA, 2002** defines the **Offence of money-laundering.—**

"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime namely:—

- (a) concealment; or*
- (b) possession; or*
- (c) acquisition; or*
- (d) use; or*
- (e) projecting as untainted property; or*
- (f) claiming as untainted property, in any manner whatsoever;*

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

10. A cumulative reading of Sections 2(1)(na), 2(1)(u), and 3 of the Prevention of Money Laundering Act, 2002 (PMLA) establishes the following essential elements required to attract an offence under Section 3 thereof:

- 1) The existence of proceeds of crime in relation to a criminal activity relating to any scheduled offence, specified in the schedule; and
- 2) Evidence of actual involvement or animus/intention on part of the accused in the scheduled offence(s), or any other person, subsequent to the accomplishment of the scheduled offence, to assist in any process or activity connected with the proceeds of crime including, its –

- a) concealment, or
 - b) possession, or
 - c) acquisition, or
 - d) use, or
 - e) projecting or claiming the proceeds of the crime as untainted property.
- 3) Mere inadvertent possession or incidental handling of the property (proceeds of crime), without the requisite criminal intent, would not suffice to attract an offence under Section 3.
- 4) It is relevant to note that any process or activity connected with the proceeds of the crime comes to a close only upon cessation of illicit gains.
- 5) i) The scope of concealment includes removal, disposal or movement of the proceeds of crime in such a manner as to hide its illicit origins.
- ii) The scope of use, projection or claim of proceeds of crime as untainted property includes all processes committed to or activities undertaken to integrate illicit gains as legal. This typically involves layering of transactions to obscure the origin of the funds, and investing such proceeds in legitimate businesses or assets to make them appear lawful.

11. The aforementioned elements ensure that the scope of the investigation remains tied to the twin objectives of the PMLA:

- Combating money laundering as a standalone offence.
- Ensuring that the property associated with criminal activities is identified, confiscated, or attached to prevent misuse in the financial system.

....

ISSUE NO. 3

35. The petitioner herein further challenges the repeated issuance of summons under Section 50 of the PMLA, arguing that these summons are vague because they do not specify whether the petitioner is being treated as an accused or a witness. This, according to the petitioner, violates the constitutional protection against self-incrimination under Article 20(3) of the Constitution.

36. Section 50 of PMLA deals with *Powers of authorities regarding summons, production of documents and to give evidence, etc.* and the relevant portions thereof, reads thus –

"Section 50. - ...

*(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon **any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.***

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860)."

(Emphasis supplied)

37. In the case of **Vijay Madanlal (supra)**, the Hon'ble Supreme Court clarified that the process under Section 50 of the PMLA, which involves summoning a person whose presence is needed for gathering evidence or records, is part of an inquiry into the proceeds of crime, and not an investigation for prosecution under the Act. There is no formal accusation brought against the summoned individual at this stage, to warrant invoking the constitutional guarantee under Article 20(3).

38. In the case of **Abhishek Banerjee v. Directorate of Enforcement (2024) INSC 668**, the Supreme Court dealt with a challenge to the issuance of summons and reaffirmed the ratio enunciated in the case of *Vijay Madanlal* and held that summons can be issued even to witnesses during the inquiry. It further stated that the procedure under the Act and its rules require the officer issuing the summons to follow Rule 11 of the PMLA Rules, 2005 which mandates the issuance of summons in Form V. The summons must include details such as the name, designation, and address of the summoning officer.

39. The Supreme Court in the case of **Mahabir Prasad Rungta v. Directorate of Enforcement, in SLP (Crl) No. 12353/2024**, also followed the *Vijay Madanlal* case and stated that money laundering charges under the PMLA cannot be concluded until the trial for the predicate offence is completed.

40. In **Sudarshan Ramesh v. Union of India (2023) SCC OnLine Kar 71**, a coordinate Bench of this Court dealt with a case, where the petitioner was repeatedly summoned in connection with an investigation involving his brother, who was implicated in a scheduled offence under the PMLA. The Court noted that despite the petitioner cooperating, nothing incriminating had been found, and he had been summoned without any reasonable grounds other than his family connection. The Court held that the principle of probable cause or reasonable grounds is fundamental to the criminal justice system, and that a person cannot be repeatedly summoned without probable cause for convenience of the prosecution.

41. In response, the learned Additional Solicitor General of India, contended that Section 50 of the Act empowered the authorized officers to summon any person necessary to give necessary evidence or produce any record. In support of the same, the learned ASG drew the attention of the Court to various precedents, including the case of **Director General of Income Tax (Investigation) v. Spacewood Furnishers Pvt. Ltd. (2015) 12 SCC 179**, wherein the Hon'ble Supreme Court stated that while the reasons for search and seizure conducted under Income Tax Act, 1961 must be recorded, they do not need to be communicated to the person at that time. The Court also emphasized that judicial review

cannot question the adequacy of the reasons for search, but only their relevance, and that any review of the sufficiency of the reasons or the authenticity of the information is not permissible. Therefore, the ASG argued that this Court cannot review the adequacy of the reasons for the search conducted under Section 17 and the issuance of summons under Section 50 of the PMLA.

42. In the case of **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Broker Pvt. Ltd., (2008) 14 SCC 208**, the Hon'ble Apex Court opined that the phrase "*reason to believe*" in Section 147 of the Income Tax Act, 1961 means a cause or justification for the purpose of assessing or reassessing income chargeable to tax, if income for any assessment year had escaped assessment. The Court further held that this expression does not require the assessing officer to have finally ascertained the facts with legal evidence or conclusion. It was emphasized that the assessing officer must act fairly towards the taxpayer while administering the statute.

43. The learned ASG also referred to the case of **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. (2022) SCC OnLine SC 1929**, where the Supreme Court observed that the provisions of the PMLA, 2002 aim not only to investigate money laundering but also to prevent money laundering and confiscate any property related to money laundering. The Court noted that the trifold objectives of the Act make it distinct from the process of investigating a scheduled offence. The Court further held that the authority conducting the search under Section 17 of the Act must forward a copy of the recorded reasons and material in its possession to the adjudicating authority in a sealed envelope immediately after the search and seizure. This procedure ensures that the contents are not tampered with, thereby guaranteeing procedural fairness and accountability. The Apex Court also noted that Section 62 of the Act provides punishment for officials conducting vexatious searches.

43.1. Relying on the above, in response to the allegation that the impugned search was arbitrary, the learned ASG argued that the PMLA has in-built safeguards against arbitrariness and misuse of power, and therefore, this Court

should not be compelled to review the search and issuance of summons at this stage.

44. In the case of **Kirit Shrimankar v. Union of India & Ors., WP (Crl.) No. 109/2013, DD 20.11.2014, and connected matters**, the Hon'ble Supreme Court observed in a challenge to the issuance of summons under Section 108 of the Customs Act, 1962 or Section 14 of the Central Excise Act, that seeking extraordinary constitutional relief under Article 32 of the Constitution was premature, where the same was sought on the grounds that petitioner had alleged that officers conducting a search at the residence of his ex-wife had threatened arrest unless the petitioner complied with their demands. The Court held that the petitioner should have pursued the remedy under law only when any positive action was taken to his prejudice.

44.1. Therefore, the learned ASG, relying on the above, argued that the petitioner herein cannot seek a similar relief under Article 226 of the Constitution, as no action prejudicial to the petitioner has yet been taken. The summons issued under Section 50 of the PMLA were lawful and aimed at gathering evidence and records for the investigation under the Act. Therefore, the petition should be dismissed as premature.

45. The High Court of Kerala in **C M Raveendran v. Union of India (2020) SCC OnLine Ker 7335** reaffirmed the above ratio, stating that no cause of action arises merely because a person is called upon to state the truth or make a statement and produce documents. The Court further held that any apprehension of being coerced into giving a statement based on repeated issuance of summons is not a valid ground to seek constitutional relief under Article 226.

46. In the case of **Union of India & Anr. v. Kunisetty Satyanarayana (2006) 12 SCC 28**, the Hon'ble Supreme Court dismissed a challenge against the framing of charges in a disciplinary action initiated by the postal department against the petitioner, who was accused of submitting a forged 'scheduled tribe' caste certificate. The Court observed that a writ petition does not lie against a charge-sheet or show-cause notice, as it does not give rise to a cause of

action. The Court stated that a writ petition can only be filed when a final order, affecting the rights of the party, is passed.

47. In **Virbhadra Singh & Anr. v. Enforcement Directorate & Anr. (2017) SCC OnLine Del 8930**, where the summons issued under Section 50 of the PMLA were challenged, and one of the petitioners therein claimed to have been illegally detained and tortured into making false statements, the High Court of Delhi ruled that enforcement officers have the authority to summon and examine any person for investigative purposes. The Court stated that a person summoned under Section 50 is not necessarily an accused at that time; they may become an accused later if arrested or prosecuted. It further held that no one can avoid responding to a summons simply because of the apprehension that they might be prosecuted in the future.

48. In the case of **Raghav Bahl v. Enforcement Directorate (WP (Crl.) No.2392/2021)**, the Delhi High Court referred to the above case and also to case *Kirit Shrimankar (supra)*. It concluded that there was no violation of the petitioner's fundamental or legal rights that would warrant intervention by the writ court at the summons stage.

49. In the case of **State of Gujarat v. Choodamani Parmeshwaran Iyer, (2023) SCC OnLine SC 1043**, the Hon'ble Supreme Court dealt with a challenge to summons under Section 145 of the Central Excise Act and Section 69 of the Goods and Services Tax Act. The petitioners argued that they were summoned due to suspected tax evasion and apprehended arrest. The Court held that those summoned must appear before the authorities for questioning and that the High Court's writ jurisdiction cannot be invoked at the summons stage to seek anticipatory bail.

50. In **Directorate of Enforcement v. State of Tamil Nadu (SLP (Crl.) No.1959-1963/2024)**, the Supreme Court clarified that under Section 50 of PMLA, authorized officers have the power to summon anyone whose attendance is necessary to give evidence or produce records for investigation. Those summoned are required to comply with the same.

51. In **Talib Hassan Darvesh v. Directorate of Enforcement, (2024) SCC OnLine Del 1811**, the Delhi High

Court rejected a challenge to summons issued by the Enforcement Directorate (ED) on the grounds that the summons were vague. The petitioner had argued that the summons did not specify their status as a witness or suspect and did not mention the documents required. The Court held that the ED could issue summons without specifying the exact documents, as they are authorized to investigate and issue summons under PMLA. It further ruled that protection from summons cannot be granted unless the petitioner is absolved in the predicate offence through discharge, acquittal, or quashing, in line with the statutory rigours of Section 45 of PMLA.

52. In **Moloy Ghatak v. Directorate of Enforcement (2023) SCC OnLine 7443**, the Delhi High Court addressed a challenge to repeated summons issued to a petitioner who was not yet an accused in the predicate offence. The Court found the petitioner's request to quash the Enforcement Case Information Report (ECIR) prematurely, because the ECIR was not provided for review, and the petitioner himself was uncertain about his status. The ED confirmed that the petitioner was not an accused at the time of the summons and had not been summoned for prosecution purposes.

53. In the present case, summons under Section 50 were issued following the 'illegal' search and seizure conducted under Section 17 of the PMLA. However, as established in the preceding paragraphs, the reasons recorded for the search do not satisfy the essential elements required to establish the commission of an offence under Section 3 of the PMLA. As a result, the search and seizure lacked proper authority for there being no proper reason to warrant such a search. The respondent-Agency can summon any person to record a statement or produce a document or record only in cases where there is credible evidence that an offence under Section 3 of PMLA has been committed, and in such circumstances, the person who has been summoned cannot raise any grievance against the issuance of summons.

54. Thus, in light of the circumstances of this case, where no prima facie case has been established showing that an offence has been committed under the PMLA, and no incriminating material has been elicited at the time of search and seizure, the issuance of summons to the petitioner lacks

legal authority. The petitioners cannot be compelled to appear and record their statements or produce documents, as such actions would unjustly infringe upon their personal right to liberty.”

The coordinate Bench holds that for an offence under Section 3 of the Act there should be possession, concealment, enjoyment and usage of the proceeds of crime, be it property or funds. Issue No.3 quoted *supra* is answered by the coordinate Bench in favour of the petitioner therein. The coordinate Bench holds that when there is no *prima facie* case established showing that an offence has been committed under the Act and no incriminating material has been elicited at the time of search and seizure, issuance of summons would lack legal authority and it was observed that the petitioner could not be compelled to appear and give statement as that would infringe upon personal right and liberty of that petitioner. The findings recorded therein are necessary to be paraphrased to the facts obtaining in the case at hand. In the said case, the person to whom the summons was issued was not an accused. In the case at hand, the petitioner is an accused in the predicate offence i.e., Crime No.11 of 2024. Notwithstanding the petitioner being an accused in the predicate offence, whether ingredients of Section 3

are met in the case at hand for proceeding further is what is required to be noticed.

17. As observed hereinabove, Section 3 has certain ingredients to be present. It should be concealment, possession, acquisition and usage of property which is allegedly proceeds of crime. What is proceeds of crime in the case at hand is sites granted in lieu of compensation. The compensation is granted under respective enactments. Whether the petitioner or other accused are guilty of those offences is being investigated into by the Lokayukta Police pursuant to registration of a crime in Crime No.11 of 2024. The facts as on the date of registration of ECIR is that the petitioner is not in possession, enjoyment and usage of sites that were allotted to her, as they have been surrendered and cancellation of allotment has happened. Therefore, there is no laundering in the case at hand.

18. In the case at hand, the alleged proceeds of crime are referable to allotment of sites. The coordinate bench in the case of **NATESHA** *supra* holds in two of its paragraphs that allotment of

sites cannot become proceeds of crime. The coordinate Bench has held as follows:

"... .."

25. Similarly, in the present case, the alleged predicate offence pertains to the illegal allotment of sites during the petitioner's tenure as the Commissioner of MUDA. However, there is no evidence to demonstrate that any consideration passed in relation to the conveyance or relinquishment of such sites was received by the petitioner. Consequently, the petitioner cannot be attributed any role in possessing, concealing, or using the proceeds of crime to constitute an offence under Section 3 of the PMLA, 2002.

26. Furthermore, mere possession of a site that was allegedly illegally allotted to an accused in connection with a scheduled offence does not, by itself, constitute an offence under the Prevention of Money Laundering Act, 2002 (PMLA), unless the essential ingredients of the offence as defined under Section 3 of the Act are satisfied.

... ..

34. It is now well settled that reason to believe must exist on the basis of evidence regarding the existence of certain facts. In the instant case, no such material as was in possession at the time of search, has been furnished to this Court to probablize the purported involvement of the petitioner. In absence of the same, any conclusion arrived at necessitating the search does not satisfy the threshold of "*reason to believe*", as envisaged under the PMLA, and is therefore, no more than a mere suspicion of involvement in the offence under the Act. Thus, this Court is of the opinion that the impugned search and seizure conducted at the residence of the petitioner was unwarranted and based on unfounded suspicion, and is therefore, an abuse of process of law."

(Emphasis supplied)

In the light of the findings rendered by the coordinate Bench, as also different High Courts interpreting what would be proceeds of crime and whom would be guilty of proceeds of crime, the case at hand neither projects the petitioner being in possession, enjoyment and usage of proceeds of crime.

19. The Enforcement Directorate has filed detailed objections appending to it proceedings of search, seizure and attachment of property. While so doing, it has relied on those very judgments which have all been considered by the coordinate Bench as quoted *supra*. A communication from the Enforcement Directorate to the Additional Director General of Police, Lokayukta dated 30-11-2024 is produced as Annexure-R1. The allegations against the petitioner, and all other accused are verbatim similar to what is alleged in the complaint registered before the concerned Court which has become a crime in Crime No.11 of 2024.

20. To a pointed query, the learned Additional Solicitor General submitted that it is not only the petitioner whom the Enforcement Directorate is concerned, but it is examining a larger

picture; large illegalities or money laundering against several persons. Those proceedings are also appended as Annexure-R2 where it makes a provisional attachment under sub-section (1) of Section 5 of the Act. The statements of several persons are recorded and illegalities in allotment to several other persons form the fulcrum of attachment order. To quote, illegal allotment to one Ravi Kumar; illegal allotment to one Abdul Wahid and illegal allotments to several other persons. There is nothing against the petitioner or other accused in Crime No.11 of 2024 recorded with evidence of statements that the sites that were allotted to the petitioner were taken forward for laundering them. This is the information that the Enforcement Directorate has rendered to the Lokayukta. Insofar as other layouts are concerned, illegal allotments are projected. Transfer of sites to relatives and associations of one G.T. Dinesh Kumar is projected. Likewise, transfer of sites to so many people by MUDA and illegal allotment to societies galore. Therefore, provisional attachment orders are passed. The sites of the petitioner, as they were surrendered as on 01-10-2024, have not become subject matter of attachment.

21. As submitted by the learned Additional Solicitor General, the Enforcement Directorate has found a larger picture of corruption and laundering in MUDA to which the present petitioner is no way responsible. The information gathered *qua* others could be taken forward by the Enforcement Directorate in a manner known to law. But, those cannot be attached to Crime No.11 of 2024. Even according to the investigation, search, seizure, and recording of statements, nothing has emerged against the petitioner, except the repetition of what was an allegation at the outset which formed the fulcrum of Crime No.11 of 2024. Therefore, in the peculiar facts of this case, in view of the preceding analysis as also, the judgment rendered by the coordinate Bench, this Court is of the considered view that the petitioner cannot be permitted to be prosecuted for offences under the provisions of Money Laundering Act through the impugned ECIR. However, the findings rendered herein are for the purpose of consideration of the case *qua* the impugned ECIR. This would not become applicable to proceedings in Crime No.11 of 2024. The petition thus, deserves to succeed.

22. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Enforcement Case Information Report in F.No. BGZO/25/2024 issued against the petitioner by the respondent stands quashed.
- (iii) All consequential actions, including summons issued, pursuant to registration of ECIR, are also obliterated.

Consequently, pending applications if any, also stand disposed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ