

Sunil Kumar Singh vs Union Of India Thru. Director ... on 31 January, 2025

Author: Sangeeta Chandra

Bench: Sangeeta Chandra

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:6844-DB

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 866 of 2025

Petitioner :- Sunil Kumar Singh

Respondent :- Union Of India Thru. Director Enforcement Deptt. Revenue Ministry Finance

Counsel for Petitioner :- Harsh Vardhan Singh

Counsel for Respondent :- Kuldeep Srivastava,G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Shree Prakash Singh,J.

1. Heard learned counsel for the petitioner, learned A.S.G.I. for the respondents/Union of India as well as Sri Abhedya Rajeev, Advocate, holding brief of Sri Kuldeep Srivastava, learned counsel appearing for the respondent no.3/Enforcement Directorate.

2. Petitioner has approached this Court for the following main prayer:

"(i) issue a writ, order or direction in the nature of Mandamus commanding the learned court having jurisdiction/authority concerned to consider the case of petitioner in light of direction of order dated 01.07.2024 passed by this Hon'ble Court in CRLP No.20172/2023, Prakash Chandra Tiwari Vs. Union of India and others, as

contained in Annexure No.1 to the writ petition."

3. Learned counsel for the petitioner submits that respondents be directed to return back the money deposited by the petitioner and other investors with interest as applicable.

4. Learned counsel appearing for respondent no.3, Enforcement Directorate, has submitted that the petitioner has statutory remedy under Section 8 of the Prevention of Money Laundering Act, 2002, the last proviso whereof provides that the special court may, if it thinks fit, consider the claim of the claimant for the purpose of restoration of the property in dispute during the pendency of trial. He has further submitted that the money being sought to be refunded to the petitioner is defined under the definition of "property" in Section 2(1)(v) of the Act aforesaid.

5. In support of the above contention, the provisions of Section 2(1)(v) and Section 8 of the Prevention of Money Laundering Act, 2002 have been referred, which are quoted hereinbelow:

"Section 2. Definition.

(1) (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;

Section 8. Adjudication.

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime] [Substituted by Act 21 of 2009, Section 5, for "offence under section 3".], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [or frozen] [Inserted by Act No. 2 OF 2013] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2)The Adjudicating Authority shall, after

(a)considering the reply, if any, to the notice issued under sub-section (1);

(b)hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c)taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3)Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] [Substituted for the words "record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property" by Act No. 2 OF 2013] or record shall,

(a)continue during [investigation for a period not exceeding [three hundred and sixty-five days] [Inserted by Finance Act, 2018 (Act No. 13 of 2018) dated 29.3.2018.] or] the pendency of the proceedings relating to any [offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]

(b)[become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58 B or sub-section (2A) of section 60 by the Adjudicating Authority] [Explanation. - For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.] (4)Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.] (5)[Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6)Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7)Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.] [(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering]:

[Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.]"

6. Learned counsel for the petitioner submits that the petitioner had invested certain amount with Shine City Infra Project Limited and thus, is required to file his claim as per Section 8 of the Prevention of Money Laundering Act, 2002 before the court concerned. He further prays that the claim of the petitioner may be directed to be accepted and considered by the court concerned on merits.

7. Looking into the facts and circumstances of the case, the petitioner shall be at liberty to raise his claim/grievance before the court concerned along with a certified copy of this order.

8. This Court has not gone into the merits of the claim, which shall be considered by the court concerned in accordance with law and in accordance with the merits of the case, without being influenced by any observation made by this Court in this order.

9. Certified copy of this order along with claims shall be filed before court concerned within ten days. The decision shall be taken by the court concerned on the claim in accordance with law and on the basis of material brought before the court by the petitioner in support of his claim.

10. With the aforesaid observations, present writ petition stands disposed of.

Order Date :- 31.1.2025 Rahul