

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF 09TH JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS SECOND APPEAL NO. 40/2020 (PMLA)

C/W

WRIT PETITION NO. 698 OF 2018 (GM-FE)

IN MSA No. 40/2020

BETWEEN:

1. THE SPECIAL DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
BANGALORE ZONAL OFFICE,
3RD FLOOR, 'B' BLOCK, BMTC,
SHANTINAGAR – TTMC,
KH ROAD, SHANTINAGAR,
BANGALORE - 560 027
REPRESENTED BY MR THYAGARAJ M N
ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT.

...APPELLANT

(BY SRI. ARVIND KAMATH, ASG FOR
SRI. UNNIKRISHNAN M, ADVOCATE)

AND:

1. M/S JOY OF INDIA
PARTNERSHIP FIRM,
RESIDING AT NO.41,
ANDHRA MUNIAPPA LAYOUT,
CHELEKERE EXTENSION,
HENNUR, BENGALURU - 560 043.

Digitally
signed by K S
RENUKAMBA

Location:
High Court of
Karnataka

2. MR. KWAN OAK SHU
S/O MR JUNG-HAK SHU,
KOREAN NATIONAL,
RESIDING AT NO.41,
ANDHRA MUNIAPPA LAYOUT,
CHELEKERE EXTENSION,
HENNUR, BENGALURU - 560 043.
3. MRS MIJEUNG BANG
W/O KWAN OAK SHU,
RESIDING AT NO.41,
ANDHRA MUNIAPPA LAYOUT,
CHELEKERE EXTENSION,
HENNUR, BENGALURU - 560 043.

...RESPONDENTS

(BY SRI. JOSHUA HUDSON SAMUEL, ADV. FOR R1 TO R3)

THIS MSA IS FILED UNDER SECTION 35 OF THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE IMPUGNED ORDER DATED 08.04.2019 PASSED BY THE HONBLE APPELLATE TRIBUNAL (SAFEMA, FEMA, PMLA, NDPS, PBPT ACT) NEW DELHI, IN MP-FE/BNG/2018 (STAY), MP-FE-96/BNG/2018 (MISC), MP-FE-97/BNG/2018 (COD) AND FPA-FE-02/BNG/ 2018/2834 (ANNEXURE-A) AND CONSEQUENTLY TO CONFIRM THE ORDER OF THE ADJUDICATING AUTHORITY IN F.NO.T-4/02/BGZO/JD (JK) 2014-15, DATE 28.06.2016 AND TO GRANT SUCH OTHER RELIEFS TO THE APPELLANT, IN THE INTEREST OF JUSTICE AND EQUITY.

IN WP NO. 698/2018

BETWEEN:

1. JDM CHARITABLE TRUST
HAVING ITS OFFICE AT
NEW LIFE COLLEGE CAMPUS,
OUTER RING ROAD, HENNUR,
BANGALORE – 560043.
REPRESENTED BY ITS TRUSTEE,
MR. S. MUTHU KUMAR,
SON OF B SHANKARA RAJ,

AGED ABOUT 43 YEARS,
AT NO.41, ANDHRA MUNIAPPA LAYOUT,
CHELEKERE EXTENSION, HENNUR,
BENGALURU - 560043.

2. MR. PAIKHOMBA SINGH THINGNAM
SON OF THOIBA SINGH THINGAM,
AGED ABOUT 25 YEARS,
RESIDING AT NO.41,
ANDHRA MUNIAPPA LAYOUT,
CHELEKERE EXTENSION,
HENNUR BENGALURU - 560043.

...PETITIONERS

(BY SRI. JOSHUA HUDSON SAMUEL, ADVOCATE)

AND:

1. THE JOINT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
BENGALURU ZONAL OFFICE,
3RD FLOOR, BLOCK B,
BMTc BUILDING, K H ROAD,
SHANTHINAGAR, BANGALORE - 560027.
2. MR SOMASHEKAR
ASSISTANT DIRECTOR
DIRECTORATE OF ENGORCEMENT,
BENGALURU ZONAL OFFICE,
3RD FLOOR, LOCK B, BMTc BUILDING,
K H ROAD, SHANTHINAGAR,
BANGALORE - 560027.

...RESPONDENTS

(BY SRI. ARVIND KAMATH, ASG FOR
SRI. UNNIKRISHNAN M, ADVOCATE FOR R1 AND R2)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED
28.6.2016 AT ANNEX-G INSOFAR AS THE PETITIONER'S RIGHT OF
PEACEFUL POSSESSION AND ENJOYMENT OF THE PETITION
SCHEDULE PREMISES; ALTERNATIVELY, ISSUE A WRIT ORDER OR
DIRECTION TO THE RESPONDENT NOT TO TAKE ANY
PRECIPITATIVE STEPS AGAINST THE PETITIONER'S POSSESSION

AND ENJOYMENT OF THE PETITION SCHEDULE PREMISES, EXCEPT IN ACCORDANCE WITH THE DUE PROCESS OF LAW.

THE ABOVE MSA AND WP HAVING BEEN HEARD AND RESERVED FOR ORDERS COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT/ORDER THIS DAY, **JAYANT BANERJI J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
AND
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

The aforesaid MSA is filed under Section 42 of the Prevention of Money Laundering Act, 2002 against the Order dated 12.09.2019 passed by the Appellate Tribunal (SAFEMA, FEMA, PMLA, NDPS, PBPT Act), New Delhi, in MP-FE-95/BNG/2018 (STAY), MP-FE-96/BNG/2018 (MISC), MP-FE-97/BNG/2018 (COD) & FPA-FE-02/BNG/2018/2934, and consequently to confirm the order of the Adjudicating Authority in F.No.T-4/02/BGZO/JD(JK)/2014-20 dated 28.06.2016.

2. Writ Petition No.698/2018 is filed by the petitioners therein challenging the Order No. JD/BGZO/O3/2016 dated 28.06.2016 passed by the Joint Director of the Directorate of Enforcement, Bengaluru Zonal Office.

MSA 40/2020

3. From the record, it appears that acting under the complaint dated 09.03.2015 made by the Deputy Director of the Directorate of Enforcement, Bengaluru, under Section 16(3) of the Foreign Exchange Management Act, 1999¹ against the respondents, alleging violation of various provisions of FEMA read with the provisions of various extant Regulations, the Joint Director issued a show cause notice dated 13.03.2015 to the respondents in the MSA as to why adjudicating proceedings under Section 16 of the FEMA should not be held against them for the contraventions and why the assets mentioned in the show cause notice and belonging to the respondent be not confiscated under Section 13(2) of the FEMA.

4. By means of the adjudication order dated 28.06.2016, the Joint Director found that the respondents had contravened the provisions of FEMA and accordingly they were found guilty. Exercising powers under Section 13(1) of the FEMA, various penalties were imposed on the respondents.

¹ FEMA

However, enquiries revealed that the balance in the bank accounts maintained by respondent No.2 were Rs.508/- and Rs.9,499/- respectively. The said amounts along with the land measuring 3237 sq.ft. at Site Nos. 41 & 56, Khata No.88, Survey No.116/2, Challakere Village, K.R. Puram Hobli, Bangalore East Taluk, Bangalore, along with the building thereon, were ordered as confiscated. The cash penalties imposed were directed to be deposited in the office of the Directorate of Enforcement within 45 days from the date of receipt of the order.

5. The aforesaid order passed by the Joint Director was challenged by the respondents before the Appellate Tribunal. By means of the order dated 12.09.2019 passed in Appeal No. FPA/FE/02/BNG/2018, the Appellate Tribunal held that there is no violation and accordingly the order of confiscation dated 28.06.2016², which also imposed penalty, was set aside.

6. The Appellate Tribunal held that the respondents were residing in India for more than 182 days in the previous

² This date is erroneously mentioned in the operative part of the impugned order as 13.03.2015.

financial year at the time of setting up of business and purchase of property in India. Thus, they satisfied the definition of the term "Person Resident in India", as defined in Section 2(v) of the FEMA. It was held that the respondents had continuously stayed for a period of 182 days in the preceding financial year, that is 2008-2009, as contemplated under Section 2(v). It was held that the respondents had applied for permission in the Reserve Bank of India³, before the purchase of immovable property. The RBI had informed that no prior permission was required if they fulfilled the criteria under Section 2(v) of the FEMA. The amount for purchase of immovable property came through legal channel and necessary FIRC certificates were issued by the Bank. The respondent was assessed for income tax since the assessment year 2010-11 and had been paying income tax till assessment year 2017-18. It was accordingly held that there was no violation. The appeal of the respondents was accordingly allowed and the order of confiscation and penalty dated 28.06.2016 was set aside.

7. It is submitted on behalf of the appellant that the partnership firm was formed without the prior permission of

³ RBI

the RBI. They received donations from various Foreign Nationals other than through authorized banking channels to the tune of Rs.2,15,21,972/-, between the years 2009 to 2014. As far as the opinion expressed by the Tribunal that the respondents had resided in India for more than 182 days during the course of the preceding financial year is concerned, the same is not disputed by the learned counsel for the appellant. However, exception has been drawn to the fact that the Tribunal proceeded to hold that for that period of residence alone the respondents were persons resident in India within the definition of Section 2(v) of FEMA. It is stated that under Sub-clause B(b) of Clause (i) of Section 2(v) of FEMA excludes a person, who has come to or stays in India, otherwise than for carrying on in India a business or vocation in India, or for any other purpose, in such circumstances, as would indicate his intention to stay in India for an uncertain period. Therefore, the respondents would not fall within the definition of the term "person resident in India".

8. It is pertinent to refer to the provision of Section 2(v) of the FEMA, which reads as follows.

"Section 2. *In this Act, unless the context otherwise requires,-*

(a) to (u) xxxx xxxx xxxx

(v) *"person resident in India" means-*

(i) a person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include—

(A) a person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than—

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(ii) any person or body corporate registered or incorporated in India,

(iii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iv) an office, branch or agency outside India owned or controlled by a person resident in India;

(w to z) xxxx xxxx xxxx"

9. Section-6 of FEMA as it stood, reads as follows:-

"6. Capital account transactions.—(1) *Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.*

(2) *The Reserve Bank may, in consultation with the Central Government, specify—*

- (a) any class or classes of capital account transactions which are permissible;*
- (b) the limit up to which foreign exchange shall be admissible for such transactions:*

Provided that the Reserve Bank shall not impose any restriction on the drawal of foreign exchange for payments due on account of amortization of loans or for depreciation of direct investments in the ordinary course of business.

(3) *Without prejudice to the generality of the provisions of sub-section (2), the Reserve Bank may, by regulations, prohibit, restrict or regulate the following:-*

- (a) transfer or issue of any foreign security by a person resident in India;*
- (b) transfer or issue of any security by a person resident outside India;*
- (c) transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India;*
- (d) any borrowing or lending in foreign exchange in whatever form or by whatever name called;*

- (e) any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India;*
- (f) deposits between persons resident in India and persons resident outside India;*
- (g) export, import or holding of currency or currency notes;*
- (h) transfer of immovable property outside India, other than a lease not exceeding five years, by a person resident in India;*
- (i) acquisition or transfer of immovable property in India, other than a lease not exceeding five years, by a person resident outside India;*
- (j) giving of a guarantee or surety in respect of any debt, obligation or other liability incurred,-*
 - (i) by a person resident in India and owed to a person resident outside India; or*
 - (ii) by a person resident outside India.*

(4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by

such person when he was resident in India or inherited from a person who was resident in India.

(6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business."

10. The finding of the Tribunal is that the property was purchased on 01.09.2009, which was more than a year after they entered India on 08.08.2008 under a business visa which was valid from 28.07.2008 to 27.07.2009 and thereafter from 17.08.2009 to 16.08.2010 and on subsequent dates. They had applied for permission to the RBI before purchase of the immovable property and were informed by RBI that no prior permission was required if they fulfilled the criteria under Section 2(v) of FEMA. The amount for purchase of immovable property came through legal channel and necessary FIRC certificates were issued by the Bank. The 1st Respondent-Firm namely "Joy of India", was assessed for Income Tax since Assessment Year 2010-2011 and had been paying income tax till Assessment Year 2017-2018.

11. The submissions advanced by the learned counsel for the appellants have to be viewed in the light of the definition of the term "person resident in India" as defined under Section 2(v)(B) of the FEMA. As is evident from perusal of the provision itself that a "person resident in India" would be a person who has come to or stays in India a) for or on taking up employment in India, or b) for carrying on in India a business or vocation in India, or c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period. These conditions would apply to such a person, who is residing in India for more than 182 days during the course of the preceding financial year.

11.1. The definition of the term "person resident in India" with reference to part (B) of sub-clause (i) of Clause (v) of Section 2 of FEMA, can also be understood by reading it in juxtaposition with part (A) of sub-clause (i) of Clause (v) of Section 2. In Part (A) the words "otherwise than" have not been mentioned.

12. Given the aforesaid definition of 'person resident in India' and the fact of residence of India by the persons, who are the respondents, exceeding 182 days not being denied by

the appellant herein, and given the fact that the concerned respondents came to India on a business visa and carried on business, and, those respondents do not fall under the exceptions provided in sub-clause (i) of Section 2 (v) of FEMA, the learned Appellate Tribunal was justified in holding that the concerned respondents were "persons resident in India". That being the case, the provision of Regulation 3 of the Foreign Exchange Management (Investment in Firm or Proprietary Concern in India) Regulations, 2000 would not apply to the respondents. Similarly, the provisions of the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 are inapplicable in the case of the respondents.

13. Similarly, the provisions of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, would be inapplicable.

14. Similarly, the Foreign Exchange Management (Establishment in India of branch or office or other place of business) Regulations, 2000 would be inapplicable to the respondents. All the transactions made by the respondents including the one for purchase of immovable property in India

was done in Indian Rupees and there is no evidence of any transaction being done in Foreign Exchange.

15. The appellants herein have not demonstrated that the finding of the Tribunal is perverse or erroneous. Therefore, the learned Tribunal has correctly observed that in view of the reply of the RBI by means of the aforesaid letter, the respondents had only to satisfy the provision of Section 2(v) of the FEMA and no prior approval was required on the day when they had purchased the immovable property.

16. The Tribunal has also referred to the sale consideration of Rs.16,03,000/- under the sale deed, which amount was received by them from overseas into their account in ICICI Bank on 16.08.2009. The Tribunal has noticed due compliance with regard to receipt of the said amount, which was substantiated in the two FIRC certificates issued by the Bank pursuant to the request made by the Joint Director. The two FIRC certificates disclosed that on 26.08.2009, two inward remittance were received through legal channel and the purpose of remittance was disclosed to the Bank. Income Tax Assessment of the first respondent was duly made and was assigned a PAN number.

17. Nothing has been demonstrated by the learned counsel for the appellants that could persuade us to dislodge the findings by the Tribunal.

18. It may be pertinent to mention here that from 23.01.2026, repeated time was granted to the appellant to produce the entire original record of the case. Even the appellant was required to be present in person with the original record. However, the original record was not produced. On 26.02.2026, the Deputy Director, Bangalore Zonal Office, Directorate of Enforcement, Bangalore, appeared in person and stated that they are unable to trace out the records. Therefore, we proceeded to hear the matter on the basis of the records available.

19. In view of the facts and circumstances, we do not find any material that would persuade us to disagree with the opinion of the Tribunal. We have also applied our independent mind to the facts of the case and the law involved and find that the order of the Tribunal is justified. The impugned order setting aside the order dated 28.06.2016 passed by the Joint Director, is upheld. No question of law is involved in the case

that would merit interference. This appeal is therefore **dismissed.**

In W.P.No.698/2018:

20. This Writ Petition is filed seeking the following prayer:

- i. *Issue a Writ, Order or direction in the nature of a certiorarified mandamus quashing the Order No.JD/BGZO/03/2016 dated 28.06.2016 produced at ANNEXURE-G in so far as the Petitioner's right of peaceful possession and enjoyment of the Petition Schedule premises.*
- i(a) *Issue a writ, order or direction in the nature of mandamus directing the respondents to handover the confiscated property i.e., property bearing Site No.41 and 56 and Khata No.88, situated in Muniyappa Layout, Chelekere, Bengaluru -560 043, morefully mentioned in the Schedule pursuant to the order dated 12.09.2022 corrected on 20.09.2022 passed by the FEMA Appellate Tribunal, New Delhi in FPA-FE-02/BNG/2018 vide Annexure-L.*
- i(b) *Issue a writ, order or direction in the nature of mandamus directing the respondents to reimburse all costs and expenses in restoring the schedule property to its original condition."*
- ii. *Alternatively, Issue a Writ, Order or direction to the Respondent not to take any precipitative steps against the Petitioner's possession and enjoyment of the petition Schedule Premises, except in accordance with the due process of law.*

iii. Pass such other order/directions as this Hon'ble Court deems fit to grant under the facts and circumstances of the case.

21. The petitioners claim to be in permissive possession of the building set up on the property purchased by the noticee in the aforesaid M.S.A. and are purportedly aggrieved by the very order dated 28.06.2016 of the Joint Director under FEMA which was under challenge before the Appellate Tribunal. The appellate Tribunal had quashed the order of the Joint Director. We have upheld the order of the Appellate Tribunal. This petition is therefore rendered infructuous. It is accordingly, disposed of.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

KGR/KG