

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 4540 OF 2013

Smt. Chandra Dilip Lalwani & Anr. .. Petitioners

Versus

Union of India & Ors... Respondent

Mr. Darius Shroff, Sr. Advocate a/w Rahul Jain i/b Res. Legal,
Advocate for the petitioners

Ms. Rebecca Gonsalvez, Advocate for R. Nos 1 & 2.

Mrs. M. H. Mhatre, APP for the State

Mr. Vikram Nankani, Sr. Advocate a/w Mr. Faizal Sayedi/b M.K.
Ambalal & Co., Advocates for R. No. 4.

**CORAM:-RANJIT MORE &
V. L. ACHLIYA, JJ.
DATED : -21/08/2015**

P. C.:

Heard Mr. Shroff, learned Senior Counsel, for the
petitioners, Mr. Nankani, learned Senior Counsel for respondent No.
4 and Ms. Gonsalves, learned Counsel for respondents No. 1 and 2
respectively.

2 By this petition under Article 226 of the Constitution
of India, the petitioners are challenging the order dated 28/11/2013

passed in FPA-13/BOM/2008 and FPA-14/BOM/2008 and order dated 8/6/2015 in FPA-34/130M/2008 and FPA-35/130M/2008 by Appellate Tribunal for Forfeited Property, New Delhi.

3 The dispute is about flat No. 103 Oceanic Building, Plot No. 321, Carter Road, Bandra (W), Mumbai 400050. This flat admittedly belongs to respondent No. 4 and his son Nitesh Ashok Sadarangani. There is no dispute that the petitioners were put in possession of the said flat by virtue of Leave and Licence Agreement executed on 28/12/2000. This Leave and Licence Agreement was for a period of sixty months with option of two further renewals of eleven months each by mutual consent. The licence fees quantified was Rs.7,500/- per month.

4 A show cause notice dated 28/5/2002 u/s 6 (1) of SAFEMA, 1976 was issued *inter alia* to respondent No. 4, on the basis of detention order u/s 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, (COFEPOSA) issued against respondent No. 4's son Nitesh Ashok Sadarangani. Notice refers several properties of respondent No. 4. However, we are concerned with said flat No. 103. The Competent

authority thereafter passed Forfeiture order u/s 7 of SAFEMA.

5 The petitioners separately challenged this order before the Appellate Tribunal. Both the appeals were allowed and matter was remanded to the competent authority. The competent authority thereafter by passing fresh order dated 17/3/2008 forfeited the properties of respondent No.4 including the said flat.

6 The petitioners as well as respondent No. 4 challenged the order dated 17/3/2008 by filing separate appeals and the appeal filed by the petitioners came to be dismissed by order dated 28/11/2013. The petitioners challenged this order by filing present petition.

7 So far as respondent No. 4's appeal was concerned, same was dismissed for default. However, subsequently it was restored to the file of the Tribunal. During the pendency of this petition and pendency of the appeal filed by respondent No. 4, the detention order u/s 3(1) of COFEPOSA was set aside at the instance of respondent No. 4 by the Bench of Punjab and Haryana High Court.

8 There is no dispute between the parties that the order

of detention under COFEPOSA is the condition precedent for an order u/s 7 of SAFEMA. Since the detention order is set aside by the Punjab and Haryana High Court, the forfeiture order u/s 7 of SAFEMA Act will no more survive.

9 Respondent No. 4's appeal was thereafter taken up for hearing by the Tribunal and was disposed of by the order dated 8th of June, 2015. The Tribunal having considered the above facts allowed the appeal filed by respondent No. 4. The forfeiture order u/s 7 of the SAFEMA Act was set aside. The Tribunal also directed that in case of physical possession of any of the property including the said flat was taken by the Competent Authority SAFEMA same shall be returned to respondent No. 4. The petitioners are aggrieved by the direction of the Tribunal so far as it relates to handing over the possession of said flat to the respondent No. 4 and, therefore, by amendment challenged this order.

10 There is no dispute that the said flat was in possession of the petitioners by virtue of leave and licence agreement executed by respondent No. 4 and his son on 28/12/2000. There is also no dispute that the petitioners handed over the possession of the said

flat to the Competent Authority in pursuance of the order passed by the Tribunal on 28/11/2013 in petitioners' appeal. There is also no dispute that the petitioners were not party to the appeal filed by respondent No. 4 before the Tribunal.

11 The petitioners claim that since forfeiture order is set aside, they are entitled to get back possession of the said flat. Respondent No. 4, on the contrary dispute the claim of the petitioners.

12 A reference also must be made to the fact that the petitioners have already filed RAE Suit in a rent Court claiming tenancy of the said flat. A reference is also required to be made to the fact that in pursuance of the auction proceedings, the petitioner was declared highest bidder and deposited an amount of Rs.15 lacs with the DRT. This auction was subsequently set aside and the petitioner has challenged this order by filing appeal before DRT-2.

13 In the above circumstances, in our considered view, the petitioners ought to have been heard before deciding who is entitled to the possession of the said flat. The impugned order dated 8/6/2015 directing handing over possession of the said flat to

respondent No. 4, therefore, cannot be sustained. The same is, accordingly, quashed and set aside. The matter is required to be remanded to the Tribunal to decide afresh regarding the entitlement of the possession of the said flat.

14 The petition is disposed of by passing the following order:

- (i) The impugned order dated 8/6/2015 passed in Appeal No. FPA-34/130M/2008 and FPA-35/130M/2008, so far as it relates to handing over possession of the disputed flat No. 103 (the said flat) to respondent No. 4 and his son, is quashed and set aside. The matter is remanded to the Tribunal;
- (ii) The tribunal shall decide afresh the issue of handing over possession of the said flat either to the petitioner, respondent No. 4 or any other person after hearing all concerned including respondent No. 4's son.
- (iii) While deciding the said appeals, the

Tribunal shall not be influenced by the order dated 28/11/2013 passed in petitioners' appeals as said order has rendered inconsequential since the detention order u/s 3(1) of COFEPOSA has been set aside by the Punjab & Haryana High Court;

- (iv) The Tribunal shall endeavour to dispose of the appeals as early as possible and preferably within the period of three months from the receipt of the order;
- (v) During the pendency and disposal of the appeals, the status quo order dated 21/1/2014 regarding suit flat shall be maintained.

(V. L. ACHLIYA, J.)

(RANJIT MORE, J.)

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