

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1728 of 2018

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1. Bishram Tiwary, Son of Brighunath Tiwary, resident of Village-Madhevapur, P.S. G.B. Nagar, District- Siwan.
 2. Ramajee Pandey, Son of Jaleshwar Pandey, resident of Village-Mahmadpur, P.S. Barhaiya, District- Siwan.
 3. Bharat Singh, Son of Shivdhari Singh, resident of Village- Bhagwanpur, P.S. Barhaiya, District- Siwan.

.... Petitioners

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Govt. of India, New Delhi.
2. The Secretary, Ministry of Finance, Department of Revenue, Govt. of India, New Delhi.
3. Smugglers and Foreign Exchange Manipulators Forfeiture of Property through its Competent Authority cum Administrator, 9th Floor, Lok Nayak Bhavan, Khan Market, New Delhi, 110003.
4. The Competent Authority cum Administrator, Smugglers and Foreign Exchange Manipulators Forfeiture of Property, 9th Floor, Lok Nayak Bhavan, Khan Market, New Delhi, 110003.
5. The Superintendent, Smugglers and Foreign Exchange Manipulators Forfeiture of Property, 9th Floor, Lok Nayak Bhavan, Khan Market, New Delhi, 110003.
6. The State of Bihar through District Magistrate, Siwan.
7. The District Magistrate, Siwan.
8. Circle Officer, Pachrukhi, Siwan.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar

For the Respondent/s : Mr. Md. Khurshid Alam -Aag12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

7 20-07-2018 Heard both sides.

The petitioners have filed this writ petition for quashing the notice as contained in Memo No.7, 8 and 9 dated 02.01.2018 issued under the signature of Circle Officer, Pachrukhi, Siwan, whereby the petitioners have been directed to vacate the lands of



Khata No.41, 40, Survey No.429/576, 429, situated in Mouza-Fatuli. The petitioners further seek direction to the respondents to produce the order dated 09.12.1992 issued by the competent authority under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and quash the entire proceeding.

The sole question arises for consideration is whether the notice issued by the Circle Officer, Pachrukhi, Siwan as contained in Annexure-2 suffers from any illegality and jurisdictional error?

Learned counsel for the petitioners submits that the petitioners purchased the lands through different sale deeds on 12.09.1981 and since then they are in possession. The petitioners received notice as contained in Annexure-2 to vacate the premises as mentioned in the notice although the petitioners had purchased the same in the year 1981. The further case of the petitioners is that the District Magistrate, Siwan vide its letter no. 91 dated 13.01.2015 directed the Circle Officer to take possession of the aforesaid piece of land and the Circle Officer submitted report that the land mentioned in the notice cannot be physically verified in the name of Mukhdeo Tiwary. Mukhdeo Tiwary died on 18.12.2012. The letter was sent to the Superintendent (Administration), the competent officer under Smugglers and



Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 that land does not stand in the name of Mukhdeo Tiwary as such physical possession of the aforesaid land cannot be carried out but again the Circle Officer issued notice to the petitioners for vacating the aforesaid land. The petitioners were never informed about any proceeding initiated against their vendor Mukhdeo Tiwary.

The respondent no.1 to 5 filed counter affidavit. Sri S.D. Sanjay, learned senior counsel appearing on behalf of the respondent no.1 to 5 submits that the order of detention was passed against Sri Mukhdeo Tiwary by U.P. Government under Section 3(1) of COFEPOSA (in smuggling activities, transportation of smuggled goods, its concealment etc) and he was further detained on 05.08.1980. The Advisory Board also confirmed the order of detention under Section 8 of the Act and the same was confirmed on 29.09.1980. Sri Mukhdeo Tiwary, the affected person challenged the order of his detention in the High Court of Allahabad on 21.09.1981 but in the meantime a notice under Section 6(1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter called as SAFEM (FOP) Act, 1976 was issued and served on him. The affected person filed writ in the High Court of Allahabad against



notice issued under Section 6(1) of the SAFEM (FOP) Act and the same was dismissed on 11.01.1982. The affected persons also filed reply to the notice issued under Section 6(1) on 15.01.1982, 09.02.1982 and 17.03.1982. Thereafter notices under Section 7(1) of SAFEM (FOP) Act, 1976 was issued on 21.09.1982 and the forfeiture order under Section 7(2) & (3) was passed on 31.03.1989. The affected persons preferred appeal against forfeiture order in the appellate tribunal and ultimately the final order was passed on 24.03.1992 forfeiting the property of Mukhdeo Tiwary, the affected person and affected persons again filed appeal before the Tribunal against the order of forfeiture which was dismissed on 19.10.1992 for non-prosecution. The said appeal was restored on 16.02.1993 and ultimately the Tribunal confirmed the order of forfeiture dated 24.03.1992. The affected person also sought rectification of the order of Tribunal passed on 16.02.1993, which was finally dismissed on 25.03.1994. The affected person challenged the order of Tribunal vide C.W.J.C. No.6266 of 1994 before the Patna High Court, which was dismissed on 02.01.1995. The order of the Appellate Tribunal for forfeiture of property was also challenged before the Patna High Court vide C.W.J.C. No.5202 of 1993, which was also dismissed on 09.11.1993. The affected person thereafter filed S.L.P. bearing



S.L.P. No.20112/1995 against the order dated 08.03.1995 of High Court of Delhi in CWP No.797 of 1995 and the Apex Court vide order dated 30.10.1995 dismissed the SLP with liberty to the affected person to file review in the High Court of Delhi. Mukhdeo Tiwary was noticed to comply the order of the appellate tribunal for forfeiture of property but the order was never complied. It is submitted that the Circle Officer directed the petitioners to vacate the lands purchased from Mukhdeo Tiwary, the affected person against whom the order of forfeiture was passed. Therefore, the notice issued by the Circle Officer cannot be challenged.

Having considered the facts and submissions of both sides, I find that the Circle Officer issued the notification as contained in Annexure-2 series to vacate the lands standing in the name of Mukhdeo Tiwary. Mukhdeo Tiwary was proceeded under COFEPOSA Act, 1974 and he was detained under the COFEPOSA Act while the affected person was under detention, the notice under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 was issued to the affected person for forfeiture of his property. Mukhdeo Tiwary filed appeal before the tribunal constituted under the aforesaid Act and Tribunal also partly confirmed the order of



the authority passed under SAFEM FOP Act. Mukhdeo Tiwary, the affected person filed writ petition in this court (Patna High Court) as well as Delhi High Court and the S.L.P. before the Apex Court and affected person lost every litigations. Thereafter the property of affected person was to be taking into possession and in pursuance thereof the competent authority under the SAFEM FOP Act sent letters to the District Magistrate, Siwan and in pursuance thereof the Circle Officer issued notice to the petitioners to vacate and give possession of the lands. Thus, it is evident that the notice was issued in order to execute the order of forfeiture of property of the affected person passed by the competent authority under the SAFEM FOP Act.

Thus, I find that the notice does not suffer from any illegality and if the petitioners, who are vendors of the affected person Mukhdeo Tiwary, may challenge the order passed by SAFEM (FOP) authority against forfeiture of property of Mukhdeo Tiwary, the vendor of the petitioners before the competent authority.

Accordingly, I do not find any merit in this writ petition and the same is dismissed.

(Prabhat Kumar Jha, J)

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