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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Judgment: 16th December, 2020***

+ **W.P.(CRL) 1564/2020 and CRL.M.A. 13435/2020**

GOVARDHAN VIGRAHAM

..... Petitioner

Through: Mr Pranjali Kishore, Advocate.

versus

UNION OF INDIA

..... Respondent

Through: Mr Dev Prakash Bhardwaj,
CGSC for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition impugning an order dated 12.03.2020, passed by the Competent Authority under Section 68-U of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act') to the limited extent that it directs surrender of possession of the property bearing no. 503, Fifth Floor, Sinchan Building, New Link Road Extension, Veera Desai Road, Mumbai (hereinafter 'the said property'). In addition, the petitioner also impugns an order dated 11.03.2020, passed by the Competent Authority under Section 68-I(1) and (3) of the NDPS Act to the extent that it declares the said property as forfeited to the Central

Government. The said order is not on record, however, the same is referred in an order dated 12.03.2020. The said orders are hereinafter referred to as ‘the impugned orders’.

2. The petitioner claims that he is a *bonafide* purchaser, for valuable and adequate consideration, of the said property and the impugned orders are, thus, without jurisdiction. In addition, the petitioner also challenges the impugned orders on the ground that the same were passed without any notice to the petitioner and without affording him any opportunity to be heard.

3. The petitioner further claims that the impugned orders have been passed in ignorance of an order dated 17.01.1994 (Order File No. 2/CA/LKO/NDPS/93/50) passed by the Competent Authority, Lucknow, whereby the Competent Authority had found that the petitioner’s predecessor-in-interest, one Mr. Anand Kumar Bagla, was a *bonafide* purchaser of the said property. Consequently, the said property had been excluded from the application of Chapter V-A of the NDPS Act, which relates to forfeiture of illegally acquired property.

Factual Background

4. The said property has been sought to be forfeited on the ground that it was allegedly acquired from proceeds of illicit traffic in drugs by one Sh. Virendra Kumar Rai @ Virendra Rai son of Sh. Kamata Prasad Rai, resident of Birdopur, Varanasi. An order of detention dated 04.12.1990, under Section 3(1) of the Prevention of Illicit

Traffic in Narcotic Drug and Psychotropic Substances Act, 1988 was passed against Virendra Kumar Rai (V.K Rai)

5. It is stated that the said detention order has neither been revoked by the Advisory Board nor has been set aside by the any court of competent jurisdiction.

6. In view of the said order, an order of forfeiture under Section 68I(1) and (3) of NDPS Act was passed on 14.01.1993 and 15.01.1993 relating to the properties of the said 'affected person' (Virendra Kumar Rai and his relatives/associates). The aforementioned properties also included the said property (Flat No. 503, A Wing, Sinchan Building, Veera Desai Road, Andheri West, Mumbai).

7. The said property was purchased by Sh. Birendra Kumar Rai, who was the father of the accused V.K. Rai, in the year 1985. He had purchased the said flat from Shelters Builders. The said property was thereafter, sold to Anand Kumar Bagla in the year 1990, who continued to own the said property till 1994. In 1994, Sh. Anand Kumar Bagla sold the said property to M/s Spintex Industries. The petitioner claims to have purchased the said property from M/s Spintex Industries in 1996.

8. The Customs Department sought to take possession of the said property and at the material time, were informed that the said property belonged to Smt. Krishna Bagla and Sh. Anand Kumar Bagla. They were apprised that the property was purchased by them on 22.02.1990 in good faith and for adequate consideration. It was noted that they

had acquired the property prior to issuance of any notice to Sh V.K. Rai under Section 68-H(1) of the NDPS Act.

9. In view of the above, the Competent Authority and Administrator, Lucknow sought a legal opinion on the question whether there was sufficient evidence to prove that the property in question had been purchased prior to issuance of notice under Section 68H(1) of the NDPS Act or prior to freezing of the said property, in good faith and for adequate consideration. Opinion was also sought whether the said property can be excluded from the notice under Section 68H(1) of the NDPS Act, which was issued to Sh. V.K. Rai. It is stated that in response to the said query, the Additional Standing Counsel of the Government of India, High Court, Lucknow Bench forwarded his opinion by a letter dated 05.11.1993. He opined that Smt. Krishna Devi Bagla and Anand Kumar Bagla had purchased the said property prior to the date of the notice; the purchase was for an adequate consideration; and the same was excluded from the notice under the NDPS Act.

10. Following the receipt of the said opinion, the Deputy Director, Narcotics Control Bureau, Varanasi sent a letter dated 06.01.1994 intimating that the said property had been wrongly frozen. The counter affidavit filed on behalf of the respondents indicates that he was of the view that the order freezing the said property had been passed inadvertently.

11. In view of the above, the Competent Authority and

Administrator, Lucknow issued a letter dated 17.01.1994 (F No. 2/CA/LKO/NDPS/48-52) accepting that the said property was to be excluded from the schedule of properties of the affected person and/or his relatives/associates.

12. In the meantime, Sh. V.K. Rai as well as Smt. Krishna Devi Bagla and Sh. Anand Kumar Bagla filed appeals before Appellate Tribunal for Forfeited Properties, New Delhi impugning the forfeiture order. The appeal preferred by Sh. V.K. Rai was allowed. The order forfeiting the said property was set aside. The case was remanded to the Competent Authority, Lucknow for deciding it afresh by 31.07.1993 after affording the appellant (Sh. V.K. Rai) an opportunity to be heard.

13. It appears that no fresh order was passed within the stipulated time. In the counter affidavit filed on behalf of the respondent, it is stated that the 'affected persons' and Sh. Anand Kumar Bagla were given numerous opportunities and subsequently a fresh order of forfeiture under Section 68-I(1) and (3) of the NDPS Act was passed on 11.03.2020 . The consequential order seeking surrender of possession dated 12.03.2020 was also passed under Section 68-U of the NDPS Act. These orders are impugned in this petition.

14. Concededly, the said impugned orders were passed *ex parte* insofar as the said property is concerned.

15. Mr Bhardwaj, learned counsel appearing for the respondent submitted that it is apparent that there was a mistake and therefore, the

matter should be remanded to the Competent Authority for deciding afresh. He submitted that quashing the impugned order – which also include other properties – would not be apposite merely because the Competent Authority had erroneously included the said property in the schedule of affected properties of the affected persons.

Reasons and Conclusions

16. There is no dispute that the petitioner is a *bonafide* purchaser and had purchased the said property for a valuable consideration. It is also averred in the present petition, which is not traversed by the respondent, that the petitioner had availed of a loan from HDFC for purchasing the said property and a No Objection Certificate stating that the said property was not subject to any encumbrance or liability had been issued by Sinchan Cooperative Housing Society for the purpose of availing the said loan.

17. The petitioner has been holding the said property since 1996 and it is not disputed that no notice of any proceedings in respect of the said property had been issued to the petitioner.

18. It is apparent from the above that there is no real controversy in respect of the essential facts that are necessary to address the challenge to the impugned orders. Admittedly, the said property had been purchased by Sh. Anand Kumar Bagla prior to issuance of notice under Section 68-H(1) of the NDPS Act. After securing a legal opinion, the Director, NCB had, by a letter dated 06.01.1994, duly informed that the said property had been incorrectly frozen and that

the order had been passed inadvertently. The Competent Authority had also accepted that the said property had been transferred to Smt. Krishna Devi Bagla and Sh. Anand Kumar Bagla in good faith and prior to passing the freezing orders under the NDPS Act. A letter to the aforesaid fact was issued on 17.01.1994 for accepting that the said property mentioned at Serial No.(XIII) of the schedule of properties, be excluded from the proceedings. In the meanwhile, the appeal preferred against the forfeiture order was also allowed and the forfeiture order had been set aside.

19. In the given circumstances, the Competent Authority was required to consider the same before passing any fresh order of forfeiture. Although the said order of forfeiture was required to be passed by 31.07.1993, the impugned orders were passed almost twenty-seven years thereafter and that too without considering that it had been duly accepted by the Competent Authority that the said property is to excluded from the proceedings.

20. The counter affidavit filed on behalf of the respondent indicates that although the exclusion of the said property from the schedule of properties to be forfeited had been accepted, a formal order had not been passed. However, there is no dispute whatsoever that the said property was not liable for forfeiture.

21. Mr. Kishore, the learned counsel appearing for the petitioner had referred to sub Section (1) of Section 68A and Clause (f) of Sub Section (2) of Section 68A of the NDPS Act and had submitted that by

virtue of the petitioner acquiring the property in good faith and for adequate consideration, he could not be considered as a person as referred to in Sub Section (1) of Section 68A of the NDPS Act and therefore, the provisions of Chapter V-A of the NDPS Act were wholly inapplicable to the petitioner. Section 68A(1) and Section 68A(2) (f) of the NDPS Act are set out below:-

“68A. Application.—(1) The provisions of this Chapter shall apply only to the persons specified in sub-section (2).

(2) The persons referred to in sub-section (1) are the following, namely:

* * * *

(f) any holder (hereafter in this clause referred to as the “present holder”) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) or clause (c) [or clause (cc)]; unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration.”

22. In view of the above, the order passed by the Competent Authority under Section 68I of the NDPS Act to the extent that it forfeits the said property under Section 68-I of the NDPS Act, is without jurisdiction.

23. Mr. Kishore had also contended that an appeal under Section 68-O of the NDPS Act would not be available to the petitioner since

the petitioner was not a person to whom the provisions of Chapter V-A of the NDPS Act are applicable.

24. The said contention is, plainly, unmerited. A plain reading of the opening sentence of Section 68-O of the NDPS Act clearly indicates that any person aggrieved by an order of Competent Authority, *inter alia*, passed under Section 68-I can file an appeal. However, considering that there is no controversy as to the essential facts and it is conceded that it was accepted that the said property was liable to be excluded from the schedule of the properties of the affected person/his relatives or associates, this Court does not consider it apposite to relegate the petitioner to exhausting his statutory remedy. More so as the order passed by the Competent Authority to the extent that it seeks to forfeit the said property and requires its surrender, is without jurisdiction.

25. In view of the above, the impugned orders to the extent that the purport to declare the said property as forfeited to the Central Government and demands its surrender, are set aside

26. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 16, 2020

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