

09.09.2021
Court No.1
Item No.62
AP/ss

FMAT 146 of 2021
With
CAN 1 of 2021

Gautam Kundu
Vs.
The Joint Director, Enforcement Directorate,
Government of India and Anr.
(Through Video Conference)

Mr. Anirban Dutta, Advocate
...for the appellant present in Court.

Mr. Amitesh Banerjee, Senior Advocate with
Mr. Tarak Karan, Advocate
Mr. Tulshi Das Roy, Advocate (Present in Court)
...for the State present on virtual mode.

Mr. Y.J. Dastoor, Additional Solicitor General
Mr. Amit Chakrabarti, Advocate
Mr. Vipul Kundalia, Advocate
...for the Union of India present in Court.

The present petition was filed challenging an order of attachment of the residential house of the appellant by an order dated January 12, 2018.

The appellant filed statutory appeal before the Appellate Tribunal for SAFEMA, FEMA, PMLA, NDPS & PBPT Act at New Delhi.

The appeal filed by the petitioner along with application seeking condonation of delay was listed before the Acting Chairman of the Tribunal on February 3, 2021 and he recused from hearing the same for the reason that the order impugned before the Tribunal was passed by him, as the Adjudicating Authority.

He further submitted that no other Member has been appointed in the Tribunal to take up the appeal.

The present petition was filed as execution of the order passed by the Adjudicating Authority was sought by the Enforcement Directorate.

This Court vide order dated March 3, 2021 directed that status quo regarding the property in question be maintained. The interim order is continuing till date.

Mr. Dastoor, learned Additional Solicitor General did not dispute the fact that no other Member except the Acting Chairman has been appointed to the Tribunal as a result of which the appellant is unable to avail his statutory remedy.

He further pointed out that the issue regarding appointment of Members to various Tribunals in the country is being taken care of by the Hon'ble Supreme Court in **WP(C) No.906 of 2021 (Delhi Bar Association Vs. Union of India; WP(C) No.910 of 2021 (Jairam Ramesh Vs. Union of India and SLP(C) No.10911 of 2021 (State Bar Council of MP Vs. Union of India).**

Keeping in view the aforesaid factual matrix and undisputed fact that the Members in the Tribunal have not been appointed, as a result of which the appeal filed by the appellant cannot be heard. The present writ petition is accordingly disposed of giving liberty to the appellant to pursue his appeal along with the application for stay pending before the Tribunal.

However, the interim stay granted by this Court on March 3, 2021 shall continue till the matter is taken up

by the Tribunal and subsequent thereto the parties will abide by any order passed by the Tribunal.

The appeal is accordingly disposed of.

[Rajesh Bindal, C.J. (A)]

[Rajarshi Bharadwaj, J.]