

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.22097 & 22100 of 2003

and

WMP No.27372 of 2003

Goutham Mandoth

... Petitioner in W.P.No.22097 of 2003

.Vs.

1. The Competent Authority
Smugglers & Foreign Exchange
Manipulators (Forfeiture of Property) Act,
64/1 G.N.Chetty Road
T.Nagar, Chennai-17.

2. The Appellate Tribunal for
Forfeited Property
New Delhi.

... Respondents in W.P.No.22097 of 2003

Prayer in W.P.No.22097 of 2003 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent made in FPA No.18/MDS/2000 dated 9.1.2001 and quash the same as this petitioner is concerned in respect of the property bearing door no.38, Munisamy Road, Taskar Town, Bangalore-51.

Mrs.Nagina Bai

... Petitioner in W.P.No.22100 of 2003

.Vs.

1. The Competent Authority
Smugglers & Foreign Exchange
Manipulators (Forfeiture of Property) Act,
64/1 G.N.Chetty Road
T.Nagar, Chennai-17.

2. The Appellate Tribunal for
Forfeited Property
New Delhi.

...Respondents in W.P.No.22100 of 2003

Prayer in W.P.No.22100 of 2003 : Writ Petition under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the second respondent made in FPA 20/MDS/2000 dated 9.1.2001 and quash the same.

For Petitioner : Mr.B.Kumar
(In Both WPs) Senior Counsel
for Mr.R.Loganathan

For Respondents : Mr.A.Kumaraguru
(In Both WPs)

COMMON ORDER

The issues involved in both these writ petitions are common and hence, they are taken up together and disposed of through this common order.

2.The subject matter of challenge in both these writ petitions pertains to the proceedings of the 2nd respondent dated 09.01.2001, wherein, the Appellate Tribunal confirmed the order of the Competent Authority and thereby, the forfeiture of the subject property was confirmed and the petitioners were held not to be entitled for any relief as subsequent purchasers of the property.

3.The petitioner in W.P.No.22097 of 2003, is the husband of the petitioner in W.P.No.22100 of 2003. The petitioners purchased the subject property situated at No.38, Munusamy Road, Bangalore by virtue of a registered sale deed dated 14.12.1994. The property originally belonged to one Abdul Razack. The said Abdul Razack was a detainee under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) (hereinafter referred as the "Act"). The 1st respondent had issued a notice dt.13.2.1980 under Section 6(1) of the SAFEMA, seeking to forfeit certain immovable properties belonging to the detainee Abdul Razack. One of the property that was forfeited was the property that was purchased by the petitioners.

4.The detenue Abdul Razack challenged the order passed under Section 7(1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA). The Competent Authority through an order dated 20.03.1998 held that the order of forfeiture of three properties will vest in the Government of India free from all encumbrances.

5.The detenue challenged this order before the Appellate Tribunal and the same was confirmed and aggrieved by the same, he filed a writ petition before this Court in W.P.No.1269 of 2000 and the same was dismissed by an order dated 04.03.2000. Aggrieved by the same, a writ appeal was filed in W.A.No.968/2000. The Division Bench of this Court after considering the facts and circumstances of the case and the rival contentions, ultimately held that out of the three properties, two of the properties are not liable to be forfeited and insofar as the first property is concerned viz., property at KGF, the order of forfeiture was confirmed.

6.The petitioners filed separate appeals before the Appellate Tribunal and the Appellate Tribunal by an order dated 09.01.2001 confirmed the order of of the Competent Authority. Aggrieved by the same, the above writ petitions have been filed before this Court.

7.Heard Mr.B.Kumar, learned Senior Counsel for the petitioners and Mr.A.Kumaraguru, learned for the respondents.

8.In the considered view of this Court, this Court need not go into the rival contentions that have been put forth by the counsel appearing on either side as well as the stand taken by the 1st respondent in the counter affidavit filed in the above writ petitions. By virtue of the order passed by the Division Bench in W.A.No.968 of 2000 dated 30.09.2011, these writ petitions have to be allowed. For proper appreciation, the relevant portion in the order passed by the Division Bench is extracted hereunder:

"74. The 2nd respondent/Appellate Tribunal, in. F.P.A. No. 27 and 28/MDS/2000 dated 10.8.2001, has clearly come to the conclusion that the Sale Deeds dated 12.10.1950 and 27.1.1953, certified copies of which were taken on record, are ample proof of financial independence of grandfather Hajee Sheik Ahmed and further that the certified copy of the Settlement Deed No. 4133/1959, which settles two properties (property at 2/10, Wuttucattan Street, Periamet, Chennai 3 -Ameena Bee and at 2/10, Wuttucattan Street, Periamet, Chennai 3 -

Fathima Bee on the grandmother of Maqbool Jan, in lieu of mehr. is also ample proof of her financial independence and accordingly, allowed the appeal. Therefore, the observation of the 2nd respondent/Appellate Tribunal that grand mother-Maqbool Jan of the appellant's daughter had ample proof of financial independence, has become final, conclusive and binding. In that view of the matter, we hold that the 3rd property viz., at No. 2/10, Wuttucattan Street, Periamet, Chennai is not liable to be forfeited. For the forgoing reasons and on an overall assessment of the facts and circumstances of the case in a cumulative fashion, we come to the inevitable conclusion that the 1st property viz., Property at K.G.F. is liable for forfeiture and in this regard, we confirm the finding of the Learned Single Judge in W.P. No. 1269 of 2000 dated 4.2.2000 and the findings of the respondents No. 1 and 2. In regard to the 2nd and 3rd property, viz., No. 38, Munusamy Road, Bangalore and No. 2/10, Wuttucattan Street, Periamet, Chennai, we hold that they are not liable to be forfeited and the contra findings of the Learned Single Judge in the order dated 4.2.2000 in W.P. No. 1269 of 2000 and the findings of the respondents No. 1 and 2 are set aside by this Court, in furtherance of substantial cause of justice."

9.By virtue of the above order, the forfeiture of the property situated at No.38, Munusamy Road, Bangalore was set aside and as a result, the property will be out of the ambit of the proceedings initiated under the SAFEMA. Consequently, the petitioners, who were the subsequent purchasers of the property will be entitled to own and enjoy the property free from all encumbrances. To that extent, the order passed by the Appellate Tribunal concerning this property, requires the interference of this Court.

10.In the result, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

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Smugglers & Foreign Exchange
Manipulators (Forfeiture of Property) Act,
64/1 G.N.Chetty Road
T.Nagar, Chennai-17.
2. The Appellate Tribunal for
Forfeited Property
New Delhi.

+2ccs to Mr.R.Loganathan, Advocate, S.R.No.43182,43183
+1cc to Mr.A.Kumaraguru, Advocate, S.R.No.43074

W.P.Nos.22097 & 22100 of 2003

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NSK/20/07/2022