IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.Nos.5064, 5791 and 6458 of 2010

Smt.A.Swarnalatha ... Petitioner in W.P.No.5064 of 2010

K.Muthulakshmi ... Petitioner in W.P.No.5791 of 2010

Abuhuraira ... Petitioner in W.P.No.6458 of 2010

Vs.

The Competent Authority and Administrator,
SAFEMA and NDPSA, Chennai
Government of India,
Ministry of Finance,
Department of Revenue,
"UTSAV", No.64/1, G.N.Chetty Road,
T.Nagar, Madras-17 ... Respondent in all the writ petitions

Common Prayer:- Petitions filed under Article 226 of the Constitution of India to issue Writ in the nature of writ of certiorari to call for the records on the file of the respondent in C.No.OCA/MDS/209/76 dated 24.02.2010 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioners : Mr.V.Karthikeyan

For Respondent : Mr.R.Sankaranarayanan
Additional Solicitor General
assisted by
Mr.V.Rabu Manohar
SCGPC

COMMON ORDER

The Notice issued under Section 7(1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 to surrender and deliver vacant possession to the competent authority is under challenge in these writ petitions.

2. The writ petitioner in WP No.5064 of 2010 purchased the property in question on 24.01.2007 by virtue of document No.287/2007 registered at the office of Sub Registrar, Palayankottai. The writ petitioner in WP No.5791 of 2010 purchased the property by a registered sale deed No.2688 of 1996 dated 02.09.1996. The writ petitioner in WP No.6458 of 2010 purchased the property by a registered deed bearing document No.323 of 1994 dated 02.04.1994.

3. According to the petitioners, they purchased the properties by availing loan from the financial institutions and the revenue records were also mutated in their favour. Necessary planning permission was accorded by the competent authority and they have put up constructions and the properties are being assessed to tax and they are paying property tax and other dues regularly. Before purchase, the petitioners have searched the registers in the Sub Registrar's office and verified the encumbrance and no encumbrance was found with respect to the above properties. Therefore, they invested their entire hard earned money and purchased the properties, But, all of a sudden, they were issued with the impugned notice dated 24.02.2010 on the ground that the properties were forfeited by the respondent and a direction was issued to surrender possession. According to the petitioners, they have purchased the properties out of hard earned money and for the ineffective management of the respondent, their right shall not be impeached . Before issuing the impugned notice, the petitioners were not informed with regard to forfeiture of the properties and therefore, the impugned notice is illegal, arbitrary and violative of principles of natural justice.

4. The learned Additional Solicitor General appearing on behalf of the respondent would contend that the properties are illegally acquired properties from and out of earning through smuggling by the original vendor. Pursuant to the notice under Section 6(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (herein after referred to as "Act") issued on 31.08.1976, the order of forfeiture under Section 7(1) of the Act was passed on 29.11.1995. As per Section 11 of the Act, transfers made after the issuance of the notice under Section 6 of the Act or under Section 10, shall be ignored if the property is subsequently forfeited under Section 7 of the Act. Since the transfer in the instance case has taken place on 02.09.1996, 24.01.2007 and 02.04.1994, they are null and void and therefore, the notice issued is very much valid and legal.

5. Heard the submissions of both sides.

6. Admittedly, notice under Section 6(1) of the Act was issued as early as 31.08.1976. Notice of forfeiture under Section 6(1) is issued for calling upon the person who acquired the property illegally or any person affected to indicate sources of income, earnings or assets, out of which or by means of which they have acquired such property, the evidence on which they rely upon and other relevant information and particulars and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act. Once notice is issued, the person, who has illegally acquired the property or any other person, who is in possession of the property, shall file a reply to the same.

7. After receiving the reply to the notice issued under Section 6 of the Act, the competent authority, after affording an opportunity to the person affected, record a finding as to whether all or any of the properties, in question, are illegally acquired properties. According to Sub Section (3) of Section 7 of the Act, where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall stand forfeited.

8. Any transaction made after the issuance of Sections 6 and 7, such transaction shall be deemed to be null and void. After forfeiture of the property, if the property is found to be in possession of any other person, the competent authority can demand surrender.

9. The petitioners purchased the properties after issuance of notice of forfeiture dated 31.08.1976 under Section 6(1) of the Act. It is noted that the forfeiture of properties was made on 29.11.1995. Except the writ petitioner in WP No.6458 of 2010, the other writ petitioners have purchased the properties after issuance of notice under section 7(3) of the Act. In the case of the writ petitioner in WP No.6458 of 2010, Section 11 of the Act will come into play and any transfer made after issuance of Section 6(1) of the Act shall be deemed to be null and void. As such, transfer of all these properties prior or after passing of Section 7 of the Act becomes null and void. Therefore, I do not find any illegality in the action taken by the respondents.

10. However, it is required to be noted that the petitioners are claiming themselves as transferees for adequate consideration. However, as per Section 2(e) of the Act, even any holder of any property which was at any time previously held by a person referred to in clause (a) or clause (b) 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 also, the Act will apply.

11. The petitioners have made diligent search in the Sub Registrar's office where encumbrance is entered. Normally the person who wants to purchase, has to verify the encumbrance. In the instant case, at the time of purchase, no encumbrance was found. It is imperative to note that all these purchasers have purchased the properties by acquiring loan from the banking financial institutions and they have repaid the loan and got title to the properties. The revenue records were also transferred in their names. They obtained planning permission and constructed buildings and the properties were assessed to tax and they continue to be in peaceful and uninterrupted possession for more than a decade after paying statutory dues. Therefore, the person, who has acquired the property through hard earned money shall not be deprived of valuable asset without any opportunity of hearing.

12. It is the look out of the respondent to recover the illegally acquired property from the detenu or offender. It is not the intention of the Legislature to punish the innocent person. According to Section 9 of the above Act, where the competent authority makes a declaration that any property stands forfeited to the Central Government under Section 7 and it is a case where the source of income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay in lieu of forfeiture.

13. As per Sub section (3) of Section 7 of the Act, where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act stand forfeited to the Central Government free from all encumbrances.

14. In these cases, till date, the petitioners are in possession and they were peacefully enjoying the properties and there is no encumbrance over the properties except the change created by the statute. In such circumstances, the respondents can very well consider invocation of Section 9 of the Act.

15.Learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in the case of Income Tax Officer, Circle I(2), Kumbakonam and another vs V.Mohan and another reported in 2021 SCC Online SC 124, wherein it is held that " if such other person" is claiming ownership of the property through the relative of the convict or detenu in relation to illegally acquired property, who was earlier owner thereof upon receipt of notice under Section 6(2) can certainly impress upon the competent authority that he is a purchaser in good faith for adequate consideration of the stated property and such a plea can be considered by the competent authority on its own merits.

16. Considering the bonafide purchase made by the petitioners and their possession in the properties over thirteen years without any interruption and the properties being their investment of hard earned money, this Court is of the opinion that they should be given an opportunity to present their case before the competent authority.

17. Hence, while upholding the action of the respondent, liberty is granted to the petitioners to make a representation to the competent authority setting out the subsequent developments and a direction is issued to the respondent to consider the case of the petitioners in the light of the judgment of the Hon'ble Supreme Court in the case of Income Tax Officer, Circle I(2), Kumbakonam and another vs V.Mohan and another reported in 2021 SCC Online SC 124 dated 14.12.2021 and to take a decision and pass orders on merits and in accordance with law after affording opportunity of personal hearing to the parties.

18. With the above direction, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Competent Authority and Administrator,
SAFEMA and NDPSA, Chennai
Government of India,
Ministry of Finance,
Department of Revenue,
"UTSAV", No.64/1, G.N.Chetty Road,
T.Nagar, Madras-17

+1cc to Mr.B.Rabu Manohar, Advocate SR.No.27748
+1cc to Mr.M.Sathish Kumar, Advocate SR.No.27919

VG II(CO)
GN(06/06/2022)