



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.3293 of 2017

and

W.M.P.(MD)Nos.2952, 2642 & 2643 of 2017

WEB COPY

K.Selvaraj

... Petitioner

Vs.

1.The Joint Director of Enforcement,
Adjudicating Authority,
Enforcement Directorate,
Chennai Zonal Office,
At 2nd and 3rd Floor,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai-600 006.

2.The Assistant Director,
Directorate of Enforcement,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent in its proceedings in F.No.T-4/27/CEZO/MDU/2016 (RK), dated 03.02.2017 and quash the same.

For Petitioner : M/s.J.Maria Roseline
For Respondents : Mr.R.Vaijaya Rajan

O R D E R

Heard the learned counsel on either side.

2. The petitioner is a person of Indian Origin and he is a Srilankan citizen. He purchased the property measuring 5015 square feet at 6th Cross Street (Lawson Road), Raja Colony, Trichy-1 in the name of his wife on 17.10.1996. The petitioner was admittedly not an Indian citizen then. Therefore, the purchase of a property in India without permission from the competent authority did amount to statutory violation attracting Section 31 of Foreign Exchange Regulation Act, 1973. For the said statutory violation, the first respondent issued the impugned show cause notice dated 31.03.2016. The show cause notice is questioned in this writ petition.

3. The respondents have filed a detailed counter affidavit opposing the writ prayer.



4. The learned standing counsel would raise three fold contentions. According to him, the offence committed by the petitioner is a continuing one and therefore, under Section 31(1) of the Foreign Exchange Management Act, 1999, the first respondent can very well proceed against the petitioner. He also would state that offence committed by the petitioner came to the knowledge of the authorities only in the year 2010. He would also add that this Court may not interfere at the show cause notice stage. He pressed for dismissal of the writ petition.

5. As rightly pointed out by the learned counsel appearing for the petitioner, the proceedings are clearly barred in view of Section 49(3) of the Foreign Exchange Management Act, 1999. The said provision reads as follows:-

"49.Repeal and Saving:-

(3) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act and no adjudicating officer shall take notice of any contravention under Section 51 of the repealed Act after the expiry of a period of two years from the date of the commencement of this Act."

6. The act committed by the petitioner was an offence under the repealed Act. Proceedings in respect of the same could not be taken after the expiry of the two years period from the date of commencement of the New Act (Foreign Exchange Management Act) came into force on 01.06.2000. Therefore, the proceedings should have been initiated against the petitioner on or before 31.05.2002. On the very face of it, the impugned proceedings are barred by limitation. The impugned proceedings are quashed. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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