IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE DR. JUSTICE A.D.MARIA CLETE

W.P.No.2142 of 2022

1. Shri Bismirkhan

2. Shri.B.Sadam Hussain

3. Rahmath Anees

4. T.Henry Josephine

5. N.Benasir Begum ... Petitioners

Vs.

The Competent Authority,
Smugglers and Foreign Exchange Manipulator
Forfeiture of Property Act, 1976,
No.27, G.N.Chetty Road,
T.Nagar, Chennai- 600 017. ... Respondent

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the respondent in F.No. OCA / MDS / 2950 / 2004 dated 14.03.2019 issued under Section 6(1) of SAFEMA and quash the same or any other order as this Hon'ble Court deems fit and proper in the circumstances of the case.

For Petitioners	:	Mr.Mr.B.Kumar,Senior Counsel, for Mr.S.Ramachandran
For Respondent	:	Mr.N.Ramesh, Special Public Prosecutor

ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

The letter dated 14.03.2019 address to the Sub-Registrar, Triplicane, Chennai, by the Joint Commissioner, office of the Competent Authority and Administrator, Smugglers and Foreign Exchange Manipulators (forfeiture of property) Act, 1976, (herein after referred as SAFEMA) is under challenge in the present writ proceedings.

2. The facts in nutshell reveal that on 26.03.1996, Shri J.Sickander S/o K.M.A.Jainulabdeen who was residing at No.12/2, Jan Mohamed Street, Chennai-2, was detained under the provisions of COFEPOSA Act for his illegal activities vide the detention order of the Government of India,

Ministry of Finance, Department of Revenue, dated 26.03.1996. The order of detention was confirmed by the High Court of Madras in HCP No.496 of 1996, dated 22.07.1999. Thus, Mr.J.Sickander is attracted as "person" in terms of Section 2(2)(b) of SAFEMA.

3. Consequently, the competent authority, based on investigations, issued notice under Section 6(1) of SAFEMA, dated 27.12.2004. The notice could not be served on person affected. It was served by way of 'affixure' by drawing Mahazar with two witnesses, to the last known address at Yousuf Lebbai Street, Chennai, in front of the detenue's house, in the year 2004. The respondents received a letter from J.Sickandar, stating that he had already sold the subject property in the year 1996 to Mr.Nazar, M.Gani and A.K.M.Yousuf through three registered sale deeds. On 04.01.2005, summons under Section 15 of SAFEMA were issued to Mr.J.Sikandar and the subsequent purchasers namely Mr.Nazar, M.Gani and A.K.M.Yousuf for their appearance on 24.01.2005. Personal hearing opportunities were afforded to Mr.J.Sikandar and the subsequent purchasers. The authorities allowed them to file written submissions. The sale of subject property in the year 1996 was affirmed by Mr.J.Sikandar and the subsequent purchasers.

Thereafter, on 11.08.2006 the authorities had reason to believe that the property was acquired out of illegal sources of income which has been established prima facie and consequently, a fresh notice under Section 6(1) of SAFEMA were issued to the subsequent purchasers, namely Mr.Nazar, M.Gani and A.K.M.Yousuf. The said notices were returned un-served.

4. Mr.Ramesh, learned Special Public Prosecutor, appearing on behalf of the respondent, would submit that the officials were taking actions continuously to trace the whereabouts of the subsequent purchasers of the subject property and therefore, the delay occurred is neither wilful nor wanten and the actions are still in progress.

5. Mr.N.Ramesh, would further submit that there is no limitation contemplated under the provisions of SAFEMA. In the absence of any time limit, the actions initiated must be permitted to go on and the letter to the Sub Registrar is an administrative letter in order to create encumbrance with reference to the subject property in view of the notice issued under Section 6(1) of SAFEMA. Admittedly, the last notice under Section 6(1) of SAFEMA was issued in the year 2004 to Mr.J.Sikandar and thereafter, to the subsequent purchasers in the year 2006. No action was pursued for about 13

years and the impugned letter has been issued to the Sub Registrar to create encumbrance in respect of the subject property by the respondents.

6. Question arises, whether the letter addressed to the Sub Registrar for creating encumbrance would be in consonance with the provisions of the SAFEMA or not? The objective of SAFEMA is to prevent smuggling of good into or out of India and to check diversion of foreign exchange. Person affected is defined under Section 2(2)(b) of SAFEMA.

7. In the present case, admittedly, the detention order had been passed against one Mr.J.Sikandar in the year 1996 under COFEPOSA Act. Thus, invoking the jurisdiction by the authority under the provisions of SAFEMA is held within their powers. Notice under Section 6(1) of SAFEMA, as mandated under the Act, was issued to the affected person namely Mr.J.Sikandar in the year 2004. Mr.J.Sikandar informed that he sold the property in the year 1996 itself to three persons and in the year 2006, the respondents issued Section 6(1) notice to the the purchasers and the notices were returned as “not delivered”.

8. The respondents would have proceeded further by following the procedures as contemplated under SAFEMA. After issuing 6(1) notice in the year 2006, admittedly, no final orders are passed under Section 7 of SAFEMA. Section 7 of SAFEMA provides forfeiture of property in certain cases. Sub Section (1) to Section 7 of SAFEMA stipulates that "*The competent authority may, after considering the explanation, if any, to the show-cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.*" Therefore, Section 7 of SAFEMA order must be passed after complying with the Rules of Natural Justice as contemplated under Section 6 of SAFEMA and by affording opportunity to the affected person or the persons holding the property etc. When Section 7 of SAFEMA order has not been passed admittedly by the respondents, the subject property has not been forfeited under the provisions of SAFEMA. When the property has not been forfeited and the respondents failed to continue the action for the past about 13 years, now addressing a letter to the Sub Registrar without

passing an order under Section 7 of SAFEME would not be proper since the letter would effect the property right of the persons who have purchased the property from the subsequent purchasers.

9. The learned Senior Counsel Mr.B.Kumar, appearing on behalf of the petitioners would submit that about four transfers took place from the year 1996. The first sale by the affected person Mr.J.Sikandar was made in the year 1996 and subsequent transfers of subject property were occurred during the years 2007 and 2015. The old building was demolished and the purchasers proposed to construct new building. Under these circumstances, the impugned letter has been addressed to the Sub Registrar depriving the current owners to deal with the properties. Admittedly no notice under Section 6(2) was issued to the subsequent purchasers who purchased the property after 1996.

10. It is not in dispute that the provisions of the Act has not been complied with in entirety by passing an order of forfeiture under Section 7 of SAFEMA. The letter now, addressed to the Sub Registrar, preventing the owners from dealing with the property is not in consonance with the provisions of the Act. The authorities ought to have pursued the matter

vigilantly during the relevant point of time. The delay of 13 years and keeping the files pending would reveal that the authorities slept over and allowed the purchasers to sell the property to some other persons also. In view of the fact that there is an enormous delay in pursuing the matter and further, the respondent has not passed any final order under Section 7 of SAFEMA, the impugned letter cannot have any legs to stand. However, there is no impediment for the authorities to proceed with the case if law permits and by following the procedures.

11. In view of the above facts and circumstances, the impugned order, issued by the Joint Commissioner, office of the Competent Authority and Administrator, SAFEMA, in F.No. OCA / MDS / 2950 / 2004 dated 14.03.2019, is quashed. Accordingly, the writ petition stands allowed.

(S.M.S.J.,) **(A.D.M.C.,J.)**
25.09.2024

Index : Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

The Competent Authority,
Smugglers and Foreign Exchange Manipulator
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S.M.SUBRAMANIAM, J.

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