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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.8940 of 2000

The Competent Authority,
SAFEM(Forfeiture of Properties Act, 1976),
No.64/1, G.N.Chetty Road,
T.Nagar, Chennai – 600 017.

... Petitioner

Vs.

1.Abdul Razack (deceased)

2.The Registrar,
Appellate Tribunal for Forfeiture Property,
Lok Nayak Bhavan,
Khan Market, New Delhi – 110 00.

3.Shemshed Begum

4.Hajina Nasreen

5.Abrar Ahmed

6.A.R.Yasmeen

7.Asfia Pasha

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records in appeal No.FPA/17/MDS/99 dated 09.12.1999 on the file of the Second Respondent and quash the same.

For Petitioner

: Mr.AR.L.Sundaresan
Additional Solicitor General of India
asst by Mr.N.Ramesh,



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For Respondents

Senior Panel Counsel
: R1-Deceased
R2-Tribunal
Mr.S.Amir S.Shah (for R4-7)
R3-Not ready in notice

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Writ Petition on hand has been instituted to quash No.FPA/17/MDS/99 dated 09.12.1999 on the file of the Second Respondent.

2. The petitioner is the competent Authority under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, (herinafter referred to as Act).

3. It is not in dispute that the Competent Authority, by order dated 20.03.1998, forfeited the property belonging to the petitioner by passing an order of forfeiture under Section 7(1) of the Act. A notice under Section 6(1) of the Act was issued on 13.02.1980, and an enquiry was conducted, affording opportunity to the affected persons. Thereafter, the order of forfeiture was issued under Section 7(1) in proceedings dated 20.03.1998.

4. However, the affected persons sold the said property at KGF, and



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the sale proceeds were invested in an LIC policy. The Competent Authority found that the sale proceeds derived from the KGF property were invested in the LIC policy and, consequently, passed an order of forfeiture in proceedings dated 30.03.1999. Therefore, it is a continuous process on account of sale of property, which was dealt with under the SAFEMA, and a forfeiture order was passed under Section 7(1).

5. The order passed by the Competent Authority forfeiting the LIC policy was challenged by way of an appeal before the Appellate Tribunal for Forfeited Property. The Tribunal adjudicated the issues and passed an order on 09.12.1999, holding that the KGF property was initially forfeited by following due process, and thereafter, the said amount was invested in the LIC policy. However, the Tribunal formed an opinion that the LIC policy cannot be forfeited, since the KGF property was already forfeited. The Tribunal held that forfeiting the LIC policy would amount to double jeopardy.

6. We are of the considered opinion that the KGF property was originally forfeited by following due process, and the affected person illegally sold the said property in violation of Section 11 of the Act. Since the sale became null and void under Section 11 of the Act, the Competent Authority



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passed a subsequent order of forfeiture, forfeiting the proceeds of sale invested by the affected persons in an LIC policy.

7. The said order was challenged by way of an appeal. However, the view taken by the Tribunal that it amounts to double jeopardy is unacceptable, since the LIC policy has been derived from and out of the property that was forfeited validly under the provisions of the SAFEMA.

8. Therefore, we are of the opinion that the findings of the Appellate Tribunal, that it amounts to double jeopardy, are not in consonance with established principles. It is a continued action taken in pursuance to the original order of forfeiture passed by the Competent Authority in proceedings dated 20.03.1998.

9. In view of the above facts and circumstances, we are inclined to set aside paragraph No.17 alone in the order impugned dated 09.12.1999 passed in FPA/17/MDS/99. In respect of all other findings, the order impugned stands confirmed.



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10. Accordingly, the Writ Petition stands *allowed in part*. No costs.

Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.]

[M.J.R., J.]

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Index: Yes
Speaking order
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To
The Registrar,
Appellate Tribunal for Forfeiture Property,
Lok Nayak Bhavan,
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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

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