IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.2731 and 2732 of 2003

1. Mrs.Ateka S.Kothari
2. Juzer S.Kothari
3. Mrs.Maryam S.Haveliwala
4. Mrs.Farida M.Mama ... Appellants in W.A.No.2731 of 2003

Juzer S.Kothari ... Appellant in W.A.No.2732 of 2003

-Vs-

1. Ganavathy

2. The Government of Tamil Nadu,
Represented by its Secretary,
Ministry of Finance, New Delhi.

3. The Appellate Tribunal,
For Forfeited Property,
Represented by its Secretary,
4th Floor, Lok Nayak Bhavan,
Khan Market, New Delhi.

4. The Competent Authority,
Narcotic Drugs and Psychotropic
Substances Act, 1985,
64/1, G.N.Chetty Road,
Madras - 600 017. ... Respondents in both W.As

COMMON PRAYER : Writ Appeals under Clause 15 of the Letters Patent, to set aside the order dated 17.07.2000 made in W.P.Nos.14721 and 14722 of 1993.

For Appellants in both W.As	:	Mr.P.H.Arvind Pandian Senior Counsel for Mrs.R.Mithra for M/s.Fox Mandal & Associates
For Respondents in both W.As	:	Mr.B.Rabu Manohar Senior Panel Counsel for R2 to R4 R1 - dismissed

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

Since these appeals were directed against the common order passed by the writ Court dated 17.07.2000 made in W.P.Nos.14721 and 14722 of 1993, with the consent of the learned counsel appearing for both sides, these appeals were heard together and are disposed of by this common order.

2. The short facts which are required to be noticed for disposal of these appeals are as follows:

(i) The respondent Department since had initiated some proceedings against one Ratnam under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'), as a follow-up action, they proceeded against his wife one Gnanavathy as in whose name there are two house properties stood.

(ii) According to the Department, those two properties were purchased or created out of the tainted money arising out of the transactions or movement of the Narcotic Drugs.

(iii) The Department has proceeded against the owner of the property, namely, Gnanavathy wife of Ratnam under the Act, where initially notice under Section 68-H was issued followed by the forfeiture order under Section 68-I of the Act by the Adjudicating Authority on 15.09.1992 confiscating the two house properties stood in the name of the said Gnanavathy.

(iv) Challenging the said proceedings dated 15.09.1992, the said Gnanavathy filed appeal before the Appellate Tribunal for forfeited properties at New Delhi in Dy.No.962 of 15.01.1993. The said appeal at the threshold was rejected by the Appellate Tribunal on the ground that, under Section 68-O(1) of the Act, such an appeal should have been filed within 45 days and if it is belatedly filed, the Tribunal would have the power to condone the delay up to 60 days, i.e., extra 15 days. However, beyond 60 days limit, if any appeal is filed, the same would not be entertained and that is the limitation fixed under the provisions of the Act, i.e., 68-O(1). Invoking the said provision, the Tribunal by order dated 08.07.1993 rejected the appeal filed by the said Gnanavathy not on merits but only on the ground of limitation.

(v) Challenging the said order passed by the Tribunal, the said Gnanavathy filed two writ petitions in respect of two properties covered under the forfeiture order in W.P.Nos.14721 and 14722 of 1993.

(vi) In the said writ petitions, since the said Gnanavathy sought for a stay of all further proceedings pursuant to the Adjudicating Authority's confiscation order dated 15.09.1992 passed under Section 68-I of the Act, such a stay also had been granted by this Court on 17.07.1994.

(vii) After the stay was granted, initially the said Gnanavathy seems to have mortgaged the property to one T.S.S.Nidhi (a Nidhi Company) and thereafter, she seems to have left Srilanka as she being a Srilankan Citizen.

(viii) Subsequently in the year 1995, these properties were purchased by the appellants through a power of attorney holder of the said Gnanavathy for a valid sale consideration.

(ix) Subsequently pending writ petitions, i.e., W.P.Nos.14721 and 14722 of 1993 came to be dismissed by the order of the learned Single Judge dated 17.07.2000.

(x) After the said writ petitions were dismissed, the respondent Department seems to have issued notices to the appellants herein who are the subsequent purchasers of the properties concerned to vacate the properties and hand over the same to the respondent Department as the properties have already been forfeited by the order of Adjudicating Authority dated 15.09.1992 and since the said order has become final by virtue of the dismissal of the appeal filed by the original owner by the Tribunal, as has been confirmed by the order passed by the writ Court by order dated 17.07.2000.

(xi) Only at that juncture, the appellants have come forward to prefer these intra Court appeals of course after getting a leave as a 3rd party, that is how these writ appeals have been filed.

3. Mr.P.H.Arvind Pandian, learned Senior Counsel appearing for the appellants has contended that, the properties were purchased by the appellants in the year 1995 during the period where the original owner, i.e., writ petitioner had been enjoying the stay granted by this Court. That apart, once the forfeiture order has been passed by the Adjudicating Authority on 15.09.1992, such position should have been intimated by the authority concerned of the respondent Department to the concerned Registrar Office. Had it been informed to the Registrar Office, there could have been encumbrance recorded in the concerned Registrar Office and if that had been reflected, certainly the appellants would not have purchased the property.

4. Therefore the failure on the part of the respondent Department to bring it to the notice of the Registering Authority, resultantly, since there has been no encumbrances recorded anywhere with regard to the properties in question, the appellants being the *bonafide* purchasers have purchased the property, as absolutely there has been no impediment or encumbrance for such purchase and after having paid the necessary sale consideration, such a purchase since has been effected and registered before the concerned Registrar Office, it is a valid sale that has been effected because of the sale transaction taken place in the

year 1995 by way of genuine transfer, hence such a transfer is protected by virtue of the stay order granted by this Court in the then pending writ petitions.

5. The learned Senior Counsel would also contend that even though subsequently the writ petitions had been dismissed in the year 2000 and only thereafter, since notice had been issued to the appellants who are the subsequent purchasers of the properties, it has come to the notice of the appellants that such a proceedings had already been initiated against the original owner where the litigations were pending before this Court.

6. The learned Senior Counsel would further submit that, insofar as the legal position as has been stated by the learned Judge in the impugned order stating that, the order passed by the Adjudicating Authority having been appealed to the Tribunal of course belatedly and it goes beyond the limitation period of 60 days by virtue of Section 68-O(1) of the Act, that kind of appeal since could not have been entertained, it was rightly rejected by the Tribunal and therefore, the learned Judge has also accepted the legal position and therefore the learned Judge dismissed the writ petitions. All these past happenings is unknown to the appellants and moreover, insofar as the right accrued on the appellants by purchasing the properties in the year 1995 is

concerned, it is during the period on the said properties since recordically no encumbrance had been registered, such a sale or transaction effected on the said properties by virtue of the valid sale transaction can be protected.

7. In support of his contention though the learned Senior Counsel has cited two decisions one by the Delhi High Court and another by this Court (of a learned Single Judge), in view of the order that we are going to pass in these appeals, we are not much pursuaded on those aspects which have been considered in those two decisions cited by the learned Senior Counsel.

8. On the other hand, Mr.B.Rabu Manohar, learned Senior Panel Counsel appearing for the respondent Department submitted that, insofar as the forfeiture that has been made by the Adjudicating Authority under Section 68-I of the Act by order dated 15.09.1992 is concerned, admittedly it has become final by virtue of the appeal filed by the original owner, having been considered, was dismissed, of course on the ground of limitation by order dated 08.07.1993.

9. He would also submit that the said position since has been reiterated by the order of the writ Court through the impugned order against which the

appellants cannot make out any ground to question the order passed by the learned Judge which is strictly in consonance with the provisions of the Act.

10. The learned Senior Panel Counsel would also submit that nowhere in the provisions of the Act it has been stated that, once an Adjudicating Authority passed an order confiscating the properties under Section 68-I of the Act, that should be intimated mandatorily to the Registering Authority.

11. In this context, the learned Senior Panel Counsel has pointed out that, whatever the transactions that has been taken place during the pendency of the issue, i.e., *pendente lite* all those transactions can be ignored for the purpose of proceedings under the provisions of the Act and also such kind of transactions can easily be declared as null and void. In this context, the learned Senior Panel Counsel appearing for the respondent Department has relied upon Section 68(M) of the Act.

12. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. As the adjudication proceedings went on against the original owner of the properties insofar as the properties are concerned it has been concluded by order dated 15.09.1992. That order even though was appealed before the Tribunal by the original owner, because of the belated appeal that was not entertained by the Tribunal by order dated 08.07.1993. In this context, if we look at the provision of 68-O(1) of the Act under the heading 'appeals' which reads thus:

> ***"68-O. Appeals.—(1)*** *[Any officer referred to in sub-section (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:*
>
> *Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."*

14. Therefore, the proviso to 68-O(1) makes it clear that, the Appellate Tribunal may entertain an appeal after the said period of 45 days, but not after 60 days from the date of aforesaid, if it is satisfied that the appeal was prevented by sufficient cause from filing the appeal in time.

15. Therefore, the discretion which has been given to the Appellate Tribunal to entertain the belated appeal beyond 45 days itself is a restricted one upto 60 days, i.e.,15 days extended time has been given under the proviso to Section 68-O(1).

16. Beyond 60 days period, the Appellate Tribunal also does not have any power or jurisdiction to entertain a belated appeal.

17. Therefore, the dismissal that has been made by the Tribunal by order dated 08.07.1993 on the ground of limitation by quoting the provision namely 68-O(1) of the Act is to be fully justified, therefore that aspect having been taken note of by the learned Judge who also has rightly affirmed the said view taken by the Tribunal and ultimately dismissed the writ petitions through the impugned order. Therefore, with regard to the said aspect of the learned Judge order in dismissing the writ petitions through the impugned order is concerned, we are also of the view that the learned Judge was right in dismissing the writ petitions.

18. However, insofar as the properties in question are concerned, it has been sold by the original owner who seems to be a Srilankan Citizen and after

mortgaging the properties she seems to have executed a power in favour of the 3rd party to exploit the properties and she left the Country and her whereabouts have not been found out or noticed even by the respondent Department.

19. When the appellants wanted to purchase the properties in the year 1995, as has been pointed out even though there has been no encumbrance noticed or registered in the concerned Registrar Office and because of which for a valid sale consideration the appellants though claimed to have purchased the properties, in view of the legal position as has been clearly envisaged under Section 68-M of the Act, where any transaction that has been made after making an order under sub-section (1) of Section 68-F or notice under Section 68-H or under Section 68-L and any property referred to in the said order or notice is transferred by anyone whatsoever such transfer for the purpose of proceeding under this chapter be ignored and if such property is subsequently forfeited to the Central Government under Section 68-I of the Act, then the transfer of such property deemed to be null and void.

20. Here in the case in hand, in fact the respondent Department is still in better position where Section 68-I order has been passed by the Adjudicating Authority on 15.09.1992 itself, therefore the deeming provision that it shall be

deemed to be null and void as contemplated under Section 68-M of the Act would squarely apply to the case in hand insofar as these two properties are concerned, if that being so, unless the order of Adjudicating Authority dated 15.09.1992 is modified, varied, set aside or rescinded, such a deeming provision shall always be applicable on these properties from 15.09.1992.

21. Therefore under any circumstances, if any transaction is made by which the property is transferred after 15.09.1992, certainly such kind of transfers can be ignored for all practical transactions or proceedings to be made under the provisions of the Act.

22. Since admittedly the transaction had been effected only in the year 1995 and that is well after 15.09.1992, the provisions under Section 68-M would squarely apply to the facts of the present case where the transaction can only be deemed to be null and void.

23. But at the same time, Section 68-K under heading 'Fine in lieu of forfeiture' has provided the following:

> *"**68K. Fine in lieu of forfeiture.**—(1) Where the competent authority makes a declaration that any property*

stands forfeited to the Central Government under section 68-I and it is a case where the source of only a part of the illegally acquired property 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, a fine equal to the market value of such part."

24. Under this provision, it is for the Competent Authority who makes a declaration that any property stands forfeited to the Central Government under section 68-I where the source of only a part of the illegally acquired property 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, a fine equal to the market value of such part.

25. In this context, Mr.B.Rabu Manohar, learned Senior Panel Counsel appearing for the respondent Department has heavily relied upon the decision of the Hon'ble Supreme Court reported in ***(1998) 1 SCC 703*** in the matter of ***Aamenabai Tayebaly and others vs. Competent Authority under SAFEMA and others,*** where he relies upon the following:

*"**12.** So far as this contention is concerned Section 9 of SAFEMA on its express language cannot apply. It lays down as under:*

"9. Fine in lieu of forfeiture. -

(1) 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 only a part, being less than one-half, of the 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, a fine equal to one and one-fifth times the value of such part.

Explanation- For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be.-

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) In the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets."

This is not a case in which the purchase of Flat No.25, Dharam Jyoti Building, Bandra, Bombay, by Tahira Sultana in February 1975 could be said to be a result of *only a part utilisation of the tainted money and any part of the said sale consideration of Rs.88,562/- could be said to have come out of a source which was not tainted. Such is not a case of anyone, Shri Nariman, learned senior counsel for the appellants, also therefore, rightly contended that he only draws an analogy from Section 9 and submits in the peculiar facts of this case that the appellants may not be disturbed after so many years especially when from the other forfeited property the central Government is likely to get Rs.65 lakhs as seen from the auction notice and that appropriate fine may be imposed on the appellants in lieu of forfeiture. It is difficult to agree. The appellants' predecessor, purchaser Tayab Ali played with fire. He purchased the property despite there being an injunction and an undertaking by his vendor Tahira Sultana in the pending proceedings in the writ petition. His transaction, therefore, was liable to be voided in the light of the final result of the writ petition which confirmed the order of forfeiture of this very property purchased by him. Even that apart, as a result of the dismissal of the writ petition of Tayab Ali's vendor by the Bombay High Court the purchased property stood forfeited to the Government prior to the date of purchase by the purchaser as the order of forfeiture, as seen above, operated from 1977 once the stay granted by the Bombay High Court stood lifted on the final dismissal of the writ petition of writ petitioner Tahira*

Sultana. Therefore, the transaction of purchase by Tayab Ali was an exercise in futility. Such a still-born transaction cannot be resurrected by passing an order of fine in lieu of forfeiture. The forfeiture of this very property had already taken place on 12-10-1977 and which order got ultimately confirmed by the Bombay High Court. Therefore, it is too late in the day for the appellants to contend that the clock should be put back and the 12-10-1977 order may be converted into fine in lieu of forfeiture especially when Tahira Sultana against whom that order has operated, has finally lost in her challenge to the said order. The fourth point for determination, therefore, has also to be rejected and stands decided against the appellants."

26. No doubt, as per the principle that has been enunciated in the said decision read with the provisions of Section 68-K of the Act, only in case where the Department finds that the source only a part of the illegally acquired property has not been proved to the satisfaction of the Competent Authority, then it become obligatory on the part of the authority to make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value.

27. However, here in the case in hand, we cannot finally say that the property has not even been bought even out of the part of the illegally acquired money or tainted money because of the Narcotic transactions, these issues cannot be gone into at this length of time.

28. But at the same time, Section 68-K empowers the authority to come to such a conclusion to permit either the owner or the subsequent purchaser to retain the property forfeited already for which a fine equal to the market value of such part of the illegally acquired money or illegal acquired property can be made.

29. However such a decision to be made by the respondent Department is purely on their discretion. However in this case, the property has been purchased by the appellants of course *bonafidely* as claimed by them in the year 1995 since then they have been in possession and enjoyment of the property. If at all the main intention of the Department to forfeit the property is for the reason that the property has been acquired illegally out of the source of money which comes from the Narcotic transactions, then in order to set-off such an amount or collect the illegal or tainted money, such kind of fine can be imposed.

30. That is why the legislature thought it fit to use the word 'fine' instead of 'price' of the property. If the Department is able to collect such a fine equal to the market value of such part, then there could be no further impediment for the Department to allow such a person namely owner of the property or the subsequent purchaser to retain the property.

31. Therefore, we feel that insofar as the appellants are concerned, since they want to set-off the fine amount equal to the market value of such part as contemplated under Section 68-K of the Act, such an endeavour if it is made by the appellants, that can very well be considered by the respondent Department and accordingly a decision can be arrived at.

32. Therefore, insofar as the ground that has been urged by the appellants side to successfully challenge the order passed by the learned Judge confirming the order passed by the Tribunal of course on the basis of limitation under Section 68-O(1) of the Act is concerned, all these grounds must fail, therefore those grounds are to be rejected.

33. In view of Section 68-M of the Act, the transaction that has been made by way of purchase by the appellants in the year 1995 since has been

taken place well after the Adjudicating Authority's order dated 15.09.1992, it shall be deemed to be null and void.

34. But at the same time, in view of Section 68-K of the Act, as has been discussed herein above, we are of the view that a direction can be given to the respondent Department, therefore, these appeals are disposed of with the following orders:

> (i) That the order passed by the learned Judge is to be sustained, accordingly, is sustained, therefore, both the appeals fail, hence they are dismissed however without any cost.
>
> (ii) However, in view of the facts and circumstances as has been discussed herein above, we are inclined to give the following directions, i.e., the respondents 2 to 4 are directed to consider the request if any made by the appellants within the meaning of Section 68-K of the Act to set-off the fine amount equal to the market value of the property that was prevailing at the time of purchase in the year 1995 with interest at the rate of 6% from the date of such purchase till the date of payment and such a plea to be made by the appellants shall be considered objectively by the respondent Department and orders to that effect shall be passed by them within a period of eight weeks from the date of receipt of such request.

35. With all these directions, the writ appeals are dismissed. However, there shall be no order as to costs.

(R.S.K., J.) (K.B., J.)
12.02.2024

NCC : Yes
Index : Yes
Speaking Order : Yes

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To

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