IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM:

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

W.P.No.22615 of 2007

Sri Premananda Trust,
Rep. by its Managing Trustee,
K.Sivathy,
Premananda Ashram,
Melapatchakudi Village,
Fathima Nagar,
Via-Viralimalai,
Pudukkottai District. ... Petitioner

Vs.

The Competent Authority,
Office of the Competent Authority,
Government of India, Ministry of Finance,
Department of Revenue,
SAFEM (FOP) & NDPS Acts,
'UTSAV', No.64/1, G.N.Chetty Road,
T.Nagar, Madras – 600 017. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent herein in his proceedings under Section 10 read with Section 6(1) and 6(2) of the Smugglers and Foreign Exchange Manipulators

(Forfeiture of Property) Act, 1976 issued under reference F.No.OCA/MDS/2991/2005 dated 08.12.2005 and 27.02.2007 and quash the same and further direct the respondent herein not to pass any order pursuant to the notice under Section 10 read with Section 6(1) and 6(2) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 issued under reference F.No.OCA/MDS/2991/2005 dated 08.12.2005 and 27.02.2007.

For Petitioner : Mr.B.Kumar,
Senior Counsel
for Mr.S.Kasirajan

For Respondent : Mr.ARL.Sunderasan,
Additional Solicitor General of India
assisted by Mr.K.Venkataswamy Babu
Senior Panel Counsel

ORDER

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

The Writ Petition on hand has been instituted questioning the validity of the notice issued under Section 10 r/w. Sections 6(1) and 6(2) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as 'SAFEMA').

2. The Writ Petitioner is Sri Premananda Trust, represented by its Managing Trustee namely K.Sivathy.

3. Swami Premananda @ Somasundaram Premkumar @ Ravi was running an establishment under the name of 'Sri Premananda Trust'. Sri Premananda Trust is a Charitable Trust registered under the India Trust Act on 20.07.2024 with 8 persons as Board of Trustees. Swami Premananda @ Premkumar was arrested on 19.11.1994 and was found guilty for an offence of rape and murder on 12.12.2002 by the High Court of Madras. Consequently few Board members left and a new Board was constituted whereby, Smt.K.Sivathy became the Managing Trustee as per the registered deed of trust dated 20.07.1994.

4. It is not in dispute that Swami Premananda was arrested on 19.11.1994; the IT Officials raided the Ashram on 23.11.1994 and 29.11.1994 and the files and materials relating to day-to-day activities of the Ashram. The premises of Swami Premananda was raided by the CB, CID Officials and consequently, the Income Tax Department conducted search and seizure operation under Section 132 of the Income Tax Act, 1961. This revealed a possession of 65.91 acres of land in the name of Swami Premananda at Melapachakudi Taluk, Pudukkottai District and the surrounding areas along with fixed deposit receipts of Rs.76 Lakhs, foreign currencies worth Rs.8.5 Lakhs, pro-notes denoting the tendered advance of Rs.6 Lakhs were found and seized by the Income Tax Authorities. Investments in other movable assets like cars, refrigerators, tractors, colour TVs etc.

5. Swami Premananda in a statement before the Income Tax Authorities on 23.11.1994, admitted purchasing 111 acres of land for Rs.12.5 Lakhs and investing around Rs.1.5 Crores in land and property development. The learned Additional Metropolitan Magistrate, Economic Offences II, Egmore, convicted him in EOCC Nos.114/2001, 115/2004, 116/2001 and 117/2001 for offences under FERA. In a statement before the Income Tax Authorities on 01.12.1994, Swami Premananda admitted bringing Rs.15 Lakhs worth of foreign currencies in 1982, deposited as a term deposit with Indian Overseas Bank, Chennai and failing to disclose it to the Income Tax or RBI. He confessed of engaging in hawala transactions and contravening FERA provisions by selling foreign currencies in Burma

Bazar, Trichy, without RBI permission. Following Swami Premananda's conviction in EOCC Nos.114/2001, 115/2004, 116/2001 and 117/2001 under FERA, a notice was issued to him, the Trust and its members under Section 10 r/w. 6 of SAFEMA.

6. The Writ Petition was instituted challenging the aforesaid notice and pursuant to the interim order granted in the Writ Petition, no further actions are initiated for the past about 17 years.

7. Mr.B.Kumar, learned senior counsel appearing on behalf of the writ petitioner would mainly contend that Swami Premananda died on 21.02.2011; he entered into Indian territory in the year 1994 as refugee; he developed an Ashram and large number of devotees, who had affinity with the Ashram donated valuables and money; the Trust was registered and religious charities were conducted. Since Swami Premananda was convicted under Sections 302 and 376 of IPC, he was inside the prison and died in the year 2011 and thereafter, Smt.K.Sivathy became the Managing Trustee of Sri Premananda Trust.

8. The learned senior counsel would further submit that Swami Premananda was expelled from the Trust in view of the letter dated 27.08.1971 sent by one Dhamayanthi Mathaji, Administrator of Sri Premananda Trust. Three different Civil Suits were instituted by Sri Premananda Trust for declaration and possession of the suit properties which belongs to the Trust and all other consequential reliefs.

9. The learned senior counsel for the petitioner would mainly contend that the impugned notice issued under Section 6(1) of SAFEMA is infirm, since the procedures as contemplated under Section 10 of SAFEMA has not been complied with. Notice was not issued to an appropriate person as contemplated under the provisions of SAFEMA. Thus, it became invalid in the eye of law. To substantiate the said contention, learned senior counsel drew the attention of this Court with reference to the language employed in Section 10 of SAFEMA, whereby, it is stated that *'the contributor of the assets out of or by means of which such property was acquired by the Trust and the Trustees'*. Therefore, the notice must have been issued both to the Trust and Trustees, as well as to contributors, which has not been done by the respondent and thus, the notice became infirm and liable to be set aside.

10. Mr.ARL. Sunderasan, learned Additional Solicitor General of India appearing for the respondent would oppose by stating that Section 10 r/w. Section 6(1) of SAFEMA had been complied with by the respondent. Under Section 10 of SAFEMA, notice was addressed to Swami Premananda @ Somasundaram Premkumar @ Ravi, who is the author of Sri Premananda Trust. The copy of the notice under Section 6(1) of SAFEMA was communicated under Section 6(2) of SAFEMA to the Managing Trustee of Sri Premananda Trust. Whether notice has been addressed to the Managing Trustee or copy was forwarded to the Trustee, would make less difference since the very objective of the notice has been fulfilled and therefore, the present Writ Petition is to be rejected.

11. The learned Additional Solicitor General of India would further submit that since the writ petitioner had received the notices, they are bound to participate in the process of inquiry before the Competent Authority and to discharge the burden of proof under Section 8 of SAFEMA.

12. Heard the erudite arguments of the learned senior counsel for the petitioner, as well as the learned Additional Solicitor General of India appearing on behalf of the respondent to the lis on hand.

13. No writ against a notice issued under Section 6(1) of SAFEMA is ordinarily entertainable, unless such notice has been issued by an Incompetent Authority, having no jurisdiction or in violation of the provisions of SAFEMA. The noticee on receipt of notice is expected to participate in the process of inquiry by availing the opportunities to be provided under the provisions of Act and by following procedures.

14. Under Section 8 of SAFEMA, burden of proving that any property specified in the notice served under Section 6 of SAFEMA is not illegally acquired property, shall be on the person affected. Therefore, on receipt of any such notice, the affected person has to submit explanations, participate in the process of inquiry and discharge burden of proof.

15. Regarding the correctness of the impugned notice, it was issued by the Competent Authority under Section 10 r/w. Section 6(1) of SAFEMA. It was addressed to Swami Premananda @ Somasundaram

Premkumar @ Ravi, author of Sri Premananda Trust. The said notice was communicated to the Managing Trustee of Sri Premananda Trust.

16. Section 10 of SAFEMA denotes procedure in relation to certain Trust property and the same reads as under:-

> ***"10. Procedure in relation to certain trust properties:*** *In the case of any person referred to in clause (vi) of Explanation 3 to sub-section (2) of section 2, if the competent authority, on the basis of the information and materials available to it, has reason to believe (the reasons for such belief to be recorded in writing) that any property held in trust is illegally acquired property, it may serve a notice upon the author of the trust or, as the case may be, the contributor of the assets out of or by means of which such property was acquired by the trust and the trustees, calling upon them within such time as may be specified in the notice which shall not ordinarily be less than thirty days, to explain the source of the money or other assets out of or by means of which such property was acquired or, as the case may be, the source of the money or other assets which were contributed to the trust for acquiring such property and thereupon such notice shall be deemed to be a notice served under section 6 and all the other provisions of this Act shall apply*

accordingly.”

17. The above provision would indicate that if the Competent Authority, on the basis of the information and materials available to it, has reason to believe that any property held by Trust is illegally acquired property, it may serve notice upon the author of the Trust or, as the case may be, the contributors of the assets out of or by means of which such property was acquired by the Trust and the Trustees, calling upon them within such time as may be specified in the notice.

18. The object of Section 10 of SAFEMA is to ensure that the notice has been issued to the person connected with the Trust. The phrases employed under Section 10 are that *'the author of the Trust or the contributor of the assets out of or by means of which such property was acquired by the Trust or the Trustees'.* In the present case, the notice was addressed to the author of the Trust and it was forwarded to the Managing Trustee representing the Trust. Therefore, the very spirit of Section 10 of SAFEMA has been complied with.

19. In the present case, Section 6(1) of SAFEMA has been complied along with Section 10 of SAFEMA. Pertinently, the writ petitioner had appeared before the Authority on 25.04.2006 and has filed their objections on 07.06.2006 and appeared for further hearing. Having participated in the process of inquiry by submitting their objections on 07.06.2006, the present Writ Petition instituted in the year 2007, is not entertainable. Therefore, we are unable to accept the grounds raised by the petitioner to assail the impugned notices issued under Section 10 r/w. Sections 6(1) and 6(2) of SAFEMA. It is left open to the petitioner to participate in the inquiry proceedings and discharge their burden of proof under Section 8 of SAFEMA.

20. With the above observations, the present Writ Petition stands dismissed. No costs.

(S.M.S, J.) **(M.J.R, J.)**
10.12.2024

Index: Yes
Speaking order
Neutral Citation: Yes

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S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

Sni

To

The Competent Authority,
SAFEM (FOPA) and NDPS Act,
Chennai – 17.

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