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W.P.Nos.32902 & 32903 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.32902 & 32903 of 2015

and

M.P.Nos.1 & 2 of 2015

Smt. Sahana Jinnah

... Petitioner in both W.Ps.

Vs.

The Competent Authority,
Smugglers and Foreign Exchange Manipulators,
(Forfeiture of Property) Act, 1976,
UTSAV, No. 64/1, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

... Respondent in both W.Ps.

Prayer in W.P.No.32902 of 2015 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records pertaining to the impugned notice dated 26.05.2005 issued in F.No. OCA/MDS/2976/2005 of the Respondent and quash the same.

Prayer in W.P.No.32903 of 2015 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to



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call for the records pertaining to the impugned notice dated 10.03.2014 issued in F.No. OCA/MDS/2975/2005 of the Respondent and quash the same.

For Petitioner
in both W.Ps. : Mr.Hari Radha Krishnan

For Respondent
in both W.Ps. : Mr.A.R.L.Sundaresan
– Additional Solicitor General of India,
assisted by
Mr.K.Venkataswamy Babu

COMMON ORDER

The writ on hand has been instituted questioning the validity of the notice issued under Section 6(1) of the Smugglers and Foreign Exchange Manipulators, (Forfeiture of Property) Act, 1976, (herein after will be referred as “Act”).

2. The impugned notice was issued based on the allegations that the petitioner was holding immovable property in his capacity as a guardian of her son Shri Shiju Jinnah. The said property was illegally acquired within the meaning of Clause (c) of Sub Section 1 of Section 3 of the Act. The



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petitioner was called upon to show cause as to why the subject property should not be treated as an illegally acquired property and consequently, forfeited to the Central Government under the provisions of the said Act.

3. The respondent had fixed the case for personal hearing on various days. The petitioner appeared before the respondent on 10.10.2013 and requested time to procure certain documents. Pertinently, certain proceedings were initiated against the daughter of the writ petitioner Smt.Jisha Jinnah under the provisions of the Act. Allegations against the daughter of the petitioner was that she had procured a total extent of 16 cents at P.V.No.728/97, T.P.No.647, Block No.53, Survey No.63 (Block) at Thaimadam, Changanassery, made out of illegal earnings of the husband of the petitioner, Shri T.H.Jinnah. The daughter of the petitioner participated in the proceedings and an order dated 10.03.2014 was passed by the respondent holding that the said land is to be forfeited to the Central Government in terms of Section 7(1) of the Act.

4. The learned counsel for the petitioner Mr.Hari Radhakrishnan would submit that the impugned show cause notice has been issued without any jurisdiction. Since, the proceeding has already been passed



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against the daughter of the petitioner and there is a finding against the petitioner in the said order, further conduct of inquiry in the case of the petitioner is an empty formality and therefore, the impugned notice issued without jurisdiction is to be set aside. The learned counsel for the petitioner relied on Section 6 of the Act relating to notice of forfeiture. Section 6 would unambiguously stipulate that reasons must be provided. However, in the present case, the impugned order does not provide any information enabling the petitioner to defend his case and therefore, the requirements under Section 6 has not been complied with and thus, the impugned notice is to be set aside.

5. In support of the said contention, the learned counsel for the petitioner reiterated that notice must indicate the value of the property held by the person which is proposed to be forfeited. The notice must state the known source of income and earnings and other assets held by the such person. Information / material made available as a result of report from the officer making the investigation under Section 18 has to be furnished. None of the conditions, as stated above, have been furnished in the impugned notice and thus, the impugned notice is informed with reference to the provisions of the Section 6 of the Act.



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6. In this context, the learned counsel for the petitioner would rely on the judgement of the Division Bench of this Court in the case of **Smt.Ayisath Munawara** in Writ Appeal No.1333 of 2018 dated 13.10.2022. Relying on the said judgement, it is urged that the fact relating to the allegations are to be set out in the notice which is absent in the impugned notice and therefore, the writ petition is to be allowed.

7. The learned Additional Solicitor General of India, Mr. Mr.A.R.L.Sundaresan, would oppose the contentions raised on behalf of the petitioner by stating that Shri T.H.Jinnah, husband of the petitioner is a person defined under the Act. Mr.T.H.Jinnah was convicted by the Chief Judicial Officer, Economic Offences, Ernakulam, Kerala in CC No.6/1995 under Customs Act. Thus, he is a person as defined under Section 2(2)(c) Sub Clause (i) of the Act. The petitioner Smt.Sahana Jinnah, being the wife of the said Mr.T.H.Jinnah is also the person defined under Section 2(2)(c) Sub Clause (i) of the Act.

8. A letter was addressed to the Assistant Commissioner of Customs, Kozhikode to cause necessary inquiry to trace the property



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standing in the name of T.H.Jinnah and his relatives / associates as per the provision of the Act and the sources of acquisition on the said properties.

9. In response to the said letter, the Assistant Commissioner of Customs, Kozhikode, vide his letter dated 18.05.2005, informed that a landed property measuring 13.1 cents of land in block No.53 Survey No.118/1 under “Thandaperu NO.11771 in Puzhavathu Muriyal, Changanassery Po, Kottayam Kerala with a tiled/ thatched single storeyed house with No.XXIV/202, Changanassery Municipality, is held in the name of the petitioner and his son Shiju Jinnah acquired for Rs.2 lakhs on 31.08.2000. The said report also indicates that there was no known source of income from the person. Thus, in the light of the petitioner holding the above mentioned valuable property, without having any known sources of income and in the light of the fact that her husband was convicted under the Customs Act, the respondent after due consideration of the fact, had reason to believe that the property was acquired out of illegal income of the person effected and hence issued notice under Section 6 (1) of the Act dated 26.05.2005.



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10. The petitioner has replied by stating that the property was given as a gift to her son Shiju Jinnah, by his paternal uncle Shri Ahamed Kabeer on 02.08.2000. The competent authorities are yet to complete the inquiry/ adjudication for the purpose of forming final opinion and to pass orders under the provisions of the Act. Thus, the present writ petition filed, challenging the notice is not maintainable.

11. Mr.A.R.L.Sundaresan. Learned Additional Solicitor General of India, would rely on the judgement of the Hon'ble Supreme Court, in the case of **Biswanath Bhattacharya Vs. Union of India, reported in (2014) 4 SCC 392**, wherein, in paragraph 19, the following observations are made.

“19. Section 6 inter alia postulates that having regard to the value of the property held by any person (to whom the Act applies) and his known sources of income, if the “competent authority” (notified under Section 5) has reason to believe that such properties are “illegally acquired properties”, the competent authority is authorised to call upon the holder of the property to “indicate” the source of his income, etc., which enabled the acquisition of such property along with necessary evidence. It also authorises the



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competent authority to call upon the noticee to show cause as to why all or any of such properties mentioned in the notice should not be declared illegally acquired properties and be forfeited to the Central Government.”

12. Considering the arguments as advanced by the learned counsel for the petitioner and the learned Additional Solicitor General of India, representing the respondent, primarily no writ against a notice is entertainable in a routine manner. A writ against a notice is entertainable only if such notice is issued by an incompetent authority having no jurisdiction or tainted with the allegations of malafide. Even in case of raising malafide allegations, the authority against whom such allegations are raised must be impleaded as party respondent in his personal capacity in the writ proceedings. High Court cannot adjudicate the merits when the show cause notice itself is under challenge in the writ proceedings.

13. In the present case, the petitioner would mainly raise the ground that the notice impugned was issued without jurisdiction since the conditions as required for issuance of notice have not been complied with. Therefore, the notice has been issued without jurisdiction and thus, the writ is to be allowed.



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14. With reference to the said arguments on behalf of the petitioner, this Court is of the considered opinion that Section 6(1) of the Act would unambiguously stipulate that “If, having regard to the value of the properties held by any person to whom this act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, and any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority **has reason to believe** (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person”.

15. The person effected, on account of notice under Section 6(1) is empowered to seek reasons by submitting an application. The authorities competent, has to communicate the reasons in the event of any request from the person effected, enabling such person to submit his explanation along with the document, if any.

16. In the present case, admittedly the petitioner has not availed the said opportunity by submitting an application to the competent authority,



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seeking reasons to believe for issuance of impugned notice under Section

6(1) of the Act. Section 6(1) of the Act is crystal clear that the authority competent must have reason to believe and such reasons for such belief is to be recorded in writing. Once the reasons are recorded in writing and on the request of the affected person, reasons may be communicated by the competent authority to the affected person, enabling them to defend their case effectively in compliance of the rules of natural justice. Contrarily, the notice itself cannot be quashed merely on the ground that no reason has been stated. It is a show cause notice, informing the affected person that actions are proposed to be initiated under the Act. If the affected person has no knowledge about the facts or reasons, then such person may submit a representation to the authority competent seeking reasons to believe for issuance of Notice under Section 6(1) of the Act and on receipt of any such request, the competent authority is bound to provide the reasons in compliance of the rules of Natural Justice.

17. The High Court is expected to exercise restraint in entertaining writ petitions, filed challenging the notice. Prolonged pendency of such petitions would cause prejudice to the Department and ultimately result in prejudice to the public interest. Therefore, in all such circumstances,



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pragmatic approach is required. If necessary, by directing the competent authority to furnish the reasons for issuance of notice under the Act, enabling the affected person to defend his case in an effective manner.

18. The observations made by the Hon'ble Apex Court, in the Case of **Biswanath Bhattacharya**, cited supra, is also in support of the above line of principles, and thus, this Court has no hesitation in arriving at a conclusion that the petitioner is at liberty to submit an application seeking reasons to believe from the competent authority, who in turn shall communicate the reasons on receipt of any such request and thereafter, proceed with the adjudication by following the procedures as contemplated.

19. Mr.Hari Radhakrishnan, learned counsel for the petitioner would raise an apprehension that there is a possibility in pre-determining the issues in the case of the petitioner, since a competent authority has already passed an order against the daughter of the petitioner, vide order dated 10.3.2014. It is needless to state that the case of the petitioner is to be dealt with independently and the observations or findings, if any, made in the earlier order passed against the daughter of the petitioner, cannot be a



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conclusive and the proceedings initiated against the petitioner is to be adjudicated based on its own merits and documents available on record.

20. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23.01.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

The Competent Authority,
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S.M.SUBRAMANIAM. J.,

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