



W.P.No.19067 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM

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

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

W.P.No.19067 of 2024

&

W.M.P.No.20917 of 2024

P.S.M. Syed Abuthahira Beevi (Deceased)
through her legal heirs and representatives

1. Hasanudeep
2. Zainudeen
3. Sarfraz Nawaz
4. Aysath Rursthana

...

Petitioners

Vs.

1. The Competent Authority
(Smugglers and Foreign Exchange
Manipulators (Forfeiture of property) Act,
Government of India, Shastri Bhavan,
Annex Building 26, Haddows Road,
Chennai – 600 006.
2. The Appellate Tribunal for Forfeited Property,
Through its registrar, 4th floor,
Lok Nayak Bhavan, Khan Market,
New Delhi – 110 003

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Respondents

PRAYER:- This writ petition has been filed under Article 226 of the



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Constitution of India to call for the records of the order of the 2nd respondent Tribunal dated 25.05.2024 in FPA/29/MDS/2001 whereby the said Tribunal has dismissed the appeal of the petitioners quash the same and consequently direct the said Tribunal to dispose of the appeal on its merits after giving due opportunity to the petitioners herein to canvas the appeal against the orders of forfeiture passed in terms of Section 7(1) of the SAFEMA, 1976 of the 1st respondent in F.No.OCA/MDS/2655/87 dated 29.01.2001.

For Petitioners : Mr. B.Satish Sundar

For Respondents : Mr.N.Ramesh,
Senior Panel Counsel

ORDER

[Order of the Court is made by S.M.SUBRAMANIAM, J.]

One Mr.Shamshuddin was detained under COFEPOSA. In 1987, consequential proceedings were initiated under the Provisions of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 to forfeit the properties held by the detenue and his wife, who is also falling under the definition of relatives under Section 2 of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred as SAFEMA). Notice was issued under Section 6(1) of SAFEMA and opportunities were provided to the affected persons. On



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account of stay granted by the Hon'ble Supreme Court, all the proceedings initiated under the Provisions of SAFEMA were kept in abeyance. The Hon'ble Supreme Court vacated the interim stay in the year 1996 and thereafter, the proceedings were restored by the competent authorities and personal hearings were afforded to the affected persons.

2.The learned counsel for the respondents would submit that even during the pendency of the case before the Hon'ble Supreme Court, Section 6(1) notices were issued to the affected persons and proceedings were alive. However, further proceedings were kept in abeyance on account of the interim stay granted by the Hon'ble Supreme Court. Further, he would submit that the order of forfeiture under Section 7 of SAFEMA was issued during the relevant point of time and the said order was taken by way of an appeal. Several proceedings were issued by the competent authorities, which may not be required for this Court to consider those proceedings in the present writ petition.



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3.The present writ petition has been instituted challenging the order passed by the 2nd respondent/Appellate Tribunal under SAFEMA dated 25.05.2024. The affected person Mrs.P.S.M.Syed Abuthahira Beevi, filed WP.No.17698 of 2014 challenging the exparte order passed by the Appellate Tribunal under SAFEMA rejecting the restoration petition filed by the affected person. The writ petition was adjudicated by the learned Single Judge of this Court and final order was passed on 02.12.2022 setting aside the exparte order passed by the Appellate Tribunal and the writ petition was allowed and the appeals filed by the affected persons were restored on file and the Tribunal was directed to dispose of the appeal as expeditiously as possible considering the nature of the delay.

4.The grievance of the writ petitioner is that once again, the Tribunal dismissed the appeal on the ground that the legal heirs of the affected person have not been impleaded in the appeal proceedings.

5.Mr.B.Sathish Sunder, learned counsel for the petitioners would



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submit that the Tribunal ought to have provided an opportunity to the legal heirs of the affected persons to adjudicate the issue on merits. Contrarily, the appeal as again rejected on the ground that steps were not taken to implead the legal heirs soon after the disposal of the writ petition by the High Court of Madras.

6.Mr.Ramesh, learned Senior Panel Counsel appearing for the respondents would oppose by stating that the petitioners are adopting delay tactics in this matter. The issues are pending from the year 1987 onwards. Section 6(1) notice was issued by following due procedures. Forfeiture order under Section 7 of SAFEMA was issued when the appeal was filed. The affected persons remained exparte and the Tribunal passed an exparte award. The said award was challenged by way of writ petition in the year 2014 and the writ petition was allowed and the appeal was restored by the High Court providing an opportunity to the affected persons to adjudicate on merits. Despite the fact, an opportunity was provided, steps were not taken by the legal heirs of the affected persons to implead themselves in the appeal proceedings. Pertinently, the legal heirs were impleaded in the writ



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proceedings and therefore, they have knowledge about the proceedings.

That being so, the Tribunal made a clear observation regarding the conduct of the writ petitioners and rejected the appeal. Thus, there is no infirmity and the present writ petition is to be rejected.

7.It is unnecessary for this Court to go into the other details since the proceedings initiated under Section 6(1) of the SAFEMA and the order passed under Section 7 became final and an appeal was filed before the Appellate Tribunal. During the first round, the exparte order passed by the Appellate Tribunal was set aside by this Court and the Appeal was restored on file.

8.Regarding the conduct of the writ petitioners, it is relevant to consider the findings made by the Appellate Tribunal. The Appellate Tribunal made findings as follows :

“ We however do not find an application to bring legal heirs of the Appellant on record or application to amend the cause title though on the remand of the case, the application should have been filed immediately. Till date,



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no application for substitution of deceased Appellant or for amendment of cause title has been filed thus the present Appeal remains in the hands of a dead person. The application in the Writ petition for substitution cannot be taken for this Appeal as each proceeding has to be taken as per its record.

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We find that this Appeal is in hands of the dead person and the Vakalatnama cannot be entertained in reference to the legal heirs not brought on record and even the amended cause title has not been filed. It is now settled law of land that even if provision of C.P.C. are not applicable for substitution of the deceased, it would still go in the terms of Order 22 Rule 3 C.P.C. The reasonable period for substitution would be of 90 days, as given under Article 120 of Limitation Act. The relevant para of the judgment of Apex Court in the case of Shri Puran Singh V/s.State of Punjab reported in (1996) 2 SCC 205 is quoted hereunder:-

“As such even if it is held that Order 22 of the Code is not applicable to writ proceedings or writ appeals, it does not mean that the petitioner or the appellant in such writ petition or appeal can ignore the death of the respondent if the right to pursue remedy even after death of the respondent survives.



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After the death of the respondent it is incumbent on the part of the petitioner or the appellant to substitute the heirs of such respondent within a reasonable time. For purpose of holding as to what shall be a reasonable time, the High Court may take note of the period prescribed of holding Article 120 of the Limitation Act for substituting the heirs of the deceased defendant or the respondent. However, there is no question of automatic abatement of the writ proceedings. Even if an application is filed beyond 90 days of the death of such respondent, the Court can take into consideration the facts and circumstances of a particular case for purpose of condoning the delay in filing the application for substitution of the legal representatives. This power has to be exercised on well known and settled principles in respect of exercise of discretionary power by the High Court. If the High Court is satisfied that delay, if any, in substituting the heirs of the deceased respondent was not intentional, and sufficient cause has been shown for not taking the steps earlier, the High Court can substitute the legal representatives and proceed with the hearing of the writ petition or the writ appeal, as the case may be. At the same time the High Court has to be conscious that after lapse of time a valuable right accrues to the legal representative of the deceased respondent and he should not be compelled to contest a claim which due to the



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inaction of the petitioner or the appellant has become final.”

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This Tribunal has passed a detailed order dealing with the similar issue though in reference to the provision of Prevention of Money Laundering Act, 2002 and not under subject matter but ratio propounded therein could apply to this case. A reference of the order in Appeals No.FPA-PMLA-229/HYD/2011, FPA-PMLA-221/HYD/2011, FPA-PMLA-226 & 227/HYD/2011, FPA-PMLA-44/HYD/2010 in the case of K.Venkatapathu Raju & Ors. Vs. the Deputy Director, Directorate of Enforcement, Hyderabad decided on 13.05.2024 is given.

In view of the recent order of this Tribunal in reference of the judgment of the Supreme Court, we are unable to keep the matter pending in the hands of the dead person. It is a situation where even the death of the deceased was in the knowledge of legal heirs while pursuing the writ petition before the High Court but did not file an application for substitution of the deceased or amendment in the cause title of this Appeal thus we are left with the option but to abate the Appeal and accordingly, it is dismissed.”



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9. Pertinently, the writ petitioners have not filed any application seeking impleadment themselves as legal heirs for more than two years.

Taking exception to the conduct of the writ petitioners, the Tribunal rejected the appeal. It is brought to the notice of this Court that the respondents have already taken possession of the forfeited properties.

10. The conduct of the litigants to increase the longevity of the litigations by one way or other, at no circumstances be appreciated by the Courts. Intentional prolongation of litigation at the instance of the parties cannot be considered as a ground for the purpose of providing repeated opportunity. In the present case, the petitioners could not able to establish ignorance in respect of the death of the affected persons or the necessity to implead the legal heirs in the appeal proceedings. Pertinently, the legal heirs of the affected persons have been already impleaded in the writ proceedings and that being so, it would be the natural course that such legal heirs ought to have been impleaded as parties in the appeal proceedings. These legal heirs were already represented through lawyers. Therefore, they cannot plead ignorance of necessity to file an appropriate application before the



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Appellate Tribunal for impleading them in the proceedings. Thus, it is apparently clear that the legal heirs of the affected persons made an attempt to escape from the clutches of the proceedings by prolonging the litigations. The initiation of proceedings under SAFEMA is going on for the past about 37 years. That being the factum, we are not inclined to entertain the writ petition.

11. Accordingly, writ petition stands dismissed. No costs.

[S.M.S., J.] [R.S.V., J.]
19.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
mrp

To

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