IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.688 of 2001

K.Sethuraman ... Petitioner

Vs.

1.The Competent Authority,
'UTSAV'
64/1, G.N.Chetty Road,
T.Nagar,
Chennai – 600 017.

2.The Appellate Tribunal for
Forfeited Property,
4th floor, 'A' Wing,
Lok Nayak Bhavan,
Khan Market,
New Delhi – 110 003. ... 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 relating to the order in M.P.No.8/MDS/98 in F.P.A.No.2/MDS/98 dated 09.11.2000 passed by the second respondent confirming the order in F.No.OCA/MDS/2012/79 dated 18.12.1997 passed by the first respondent, quashing the same in so far as the petitioner is concerned.

For Petitioner : Mr.Satish Sundar
For Mr.M.M.K.Alifudeen

For Respondents : Mr.N.Ramesh
Special Public Prosecutor
(For R1)

R2 - Tribunal

O R D E R

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

The *lis* on hand has been instituted originally questioning the validity of the order passed by the Appellate Tribunal for forfeited property dated 09.11.2000 in M.P.No.8/MDS/98 in F.P.A.No.2/MDS/98.

2. Section 6(1) notice under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [hereinafter referred to as "SAFEM (FOM) Act"] was issued to the affected person namely Mr. M. Kalyanasundaram on 29.08.1979. The writ petitioner is none other than the son of the affected person Mr. M. Kalyanasundaram. During the relevant point of time, when Section 6(1) notice was issued to the writ petitioner, he was a minor. Therefore, the Appellate Tribunal by order dated 21.12.1990, set aside the order passed by the competent authority under Section 7(1) of the SAFEM (FOM) Act. The matter was re-adjudicated. The

competent authority again passed an order under Section 7(1) of the SAFEM (FOM) Act and the subject properties were forfeited. The petitioner preferred an appeal before the Appellate Tribunal. The Appellate Tribunal adjudicated the issues between the parties and passed the impugned order in proceedings dated 09.11.2000. The said order came to be challenged in the present writ petition.

3. The present writ petition in W.P.No.688 of 2001 was already withdrawn by the petitioner on 24.09.2013 and this Court accepting the endorsement made by the learned counsel for the petitioner, dismissed the writ petition as withdrawn. However, the petitioner after sometime, filed a Miscellaneous Petition in W.P.M.P.No.258 of 2013, seeking restoration of the writ petition. The said petition was filed with a delay of 28 days, which was condoned by this Court. However, the writ petition was not restored for the past about 10 years. When the matter is taken up for hearing, the learned counsel for the petitioner would submit that the restoration petition was not listed before the Court for hearing after 2014. The learned counsel for the petitioner had mistakenly withdrawn the petition in the year 2013 and therefore, the petition to restore is to be considered and the issues on merits are to be decided in the writ petition.

4. Beyond the lapses committed by the petitioner by withdrawing the writ petition and filing a petition to restore the writ petition, which is kept pending for about 10 years, we have considered the facts also.

5. Notice under Section 6 (1) of the SAFEM (FOM) Act was issued to the affected person / father of the writ petitioner Mr. M. Kalyanasundaram and it was subsequently set aside and the matter was remanded since the petitioner was a minor during the relevant point of time, when Section 6(1) notice was issued. During re-adjudication, the issues were considered elaborately by the competent authority and by the Appellate Tribunal under the provisions of the SAFEM (FOM) Act. The competent authority passed an order under Section 7 of the SAFEM (FOM) Act and forfeited the subject property. The Appellate Tribunal considered the issues. The Appellate Tribunal confirmed the order of the competent authority and dismissed the appeal. Thus, the present writ petition.

6. Mr.Satish Sundar for Mr.M.M.K.Alifudeen, learned counsel appearing on behalf of the writ petitioner would submit that the competent authority as well as the Appellate Tribunal has failed to consider the report submitted by the Inspector of Income Tax, which was communicated to the

competent authority on 30.10.1982. An enquiry was conducted by the income tax officer pursuant to the letter addressed by the competent authority by invoking Section 18(2) of the SAFEM (FOM) Act. Accordingly, an enquiry was conducted and the income tax officer submitted a report, which was not taken into consideration, more specifically, with regard to the adoption of the petitioner. The petitioner filed an affidavit along with the report of the Income Tax officer, stating about the validity of the adoption, which was not also considered.

7. In support of his contentions, the learned counsel for the petitioner would rely on the judgment of the Hon'ble Division Bench of this Court in the case of ***Mohammed Hanifa Vs. Appellate Tribunal for Forfeited Property and another reported in 1994 SCC OnLine Mad 684***, wherein the Hon'ble Division Bench made the following observations regarding Section 18 of SAFEM (FOM) Act and the same reads as under:

> "***6.*** *We have been taken through the orders of the competent authority and the Tribunal. Both have accepted the case of the petitioner that a sum of Rs. 5,040 was obtained by sale of jewellery belonging to the wife of the petitioner. Both the authorities have rejected the case of the petitioner in so far as it related to the two loans, viz., Rs. 5,000 and Rs. 2,000, from two persons. On going*

through the orders, we find that the appreciation of evidence given by the witnesses relating to loans is mainly influenced by the fact that they were not again produced before the competent authority. Section 18 of the SAFEMA specifically provides thus:

> *"18. Power of competent authority to require certain officers to exercise certain powers.—(1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.*
>
> *(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.*
>
> *(3) Any officer of the Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for*

any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly."

8. We have considered the arguments made on behalf of the parties. It is not in dispute that Section 6(1) notice as contemplated under SAFEM (FOM) Act was issued to the affected persons and it was set aside on the ground that the writ petitioner was a minor during the relevant point of time. Again process commenced afresh and the competent authority issued an order under Section 7(1) of the SAFEM (FOM) Act, forfeiting the subject property. An appeal was preferred before the Appellate Tribunal. The Appellate Tribunal elaborately considered the issues. Regarding the validity of adoption, the Tribunal considered the materials submitted by the affected persons along with the writ petitioner. The Tribunal made a specific finding that the documents filed by the affected person and the petitioner are insufficient to hold that the adoption is valid. In this context, in paragraph 10 of the impugned order, the Appellate Tribunal made a finding and the same is extracted hereunder:

"11. As observed earlier, the documents by which the appellant acquired title clearly reveal that the properties were purchased by the detenu as father and guardian of the

appellant and the consideration was paid by him. The appellant failed to discharge the burden cast on him under Section 8 of the Act and could not disprove that the properties are not illegally acquired. The plea of adoption has not been established by any evidence. The affidavits filed on behalf of the appellant do not state any date on which the alleged adoption is stated to have taken place. Mere explanation by the counsel for the appellant before the CA and before us, that the adoption took place on 27.08.1963, unsupported by any evidence, cannot be accepted. We, therefore, reject the plea that the appellant was adopted by his paternal uncle. Even if the adoption was true, it is not proved that the adoption took place before the dates on which the sale deeds were obtained in favour of the appellant. The nexus between the detenu and the properties is clearly established.

12. We see no reason to interfere with the order of the Competent Authority and agree with his findings and dismiss the appeals."

9. The above finding of the Appellate Tribunal would reveal that the affected person and the petitioner had not filed any documents relating to adoption either before the competent authority or before the Appellate Tribunal. In the absence of any valid adoption, the contention raised by the Appellants were rejected by the Tribunal. The Tribunal formed an opinion that the theory of adoption was mooted out in order to escape from the

clutches of SAFEM (FOM) proceedings. Even before this Court, the petitioner is unable to establish about the validity of adoption by producing any acceptable documents. Therefore, we are not inclined to agree with the grounds raised on behalf of the petitioner. The findings of the Tribunal based on the documents produced are candid and convincing and therefore, the petitioner has not made out any acceptable ground for considering the present writ petition.

10. Consequently, the writ petition stands dismissed. No costs.

[S.M.S., J.] [M.J.R., J.]
03.12.2024
(2/2)

Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order

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To

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3.The Special Public Prosecutor,
Madras High Court.

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AND
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