



W.M.P.No.34246 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.M.P.No.34246 of 2024

in

W.P.No.22098 of 2003

Kantha Bai

... Petitioner

vs.

1.The Competent Authority,
Smugglers and Foreign Exchange Manipulators
(Forfeiture of Property) Act,
64/1 G.N.Chetty Road,
T.Nagar,
Chennai – 17.

2.The Appellate Tribunal for Forfeited property,
4th floor, C Wing, Lok Nayak Bhavan,
Khan Market,
New Delhi

... Respondents

Prayer : Writ Miscellaneous Petition filed to list the case for clarification under the category of “clarification or of being spoken to of the order dated 06.07.2022 in W.P.No.22098 of 2003”, and issue directions to the 1st and 2nd Respondents herein.

For Petitioner : Mr.B.Kumar
Senior Counsel for Mr.R.Loganathan

For Respondents : Mr.Kumaraguru



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Senior Panel Counsel
ORDER

This petition has been filed seeking for clarification of the common order passed by this Court in the Writ Petitions in W.P.Nos.22098 and 22099 of 2003 on 06.07.2022.

2. The clarification sought for in this petition pertains to the direction issued by this Court at Paragraph No.20 of the order which is extracted hereunder :

*“20. In view of the above discussion, this Court is inclined to remand the matter back to the file of the 2nd respondent for the limited purpose of exercising its jurisdiction under Rule 20 of the Forfeited Property (Procedure) Rules, 1986 in order to enable the 2nd respondent to determine the amount and direct the petitioners to pay the same to the Central Government within the stipulated period. On the petitioners making such payment of the amount determined by the 2nd respondent, the property can be released from forfeiture. If the amount is not paid, the order of forfeiture can be confirmed and further action can be taken under the provisions of SAFEMA. The 2nd respondent shall pass appropriate orders in this regard within a period of **twelve weeks** from the date of receipt of copy of this Order.”*

3. Mr.B.Kumar, learned senior counsel appearing on behalf of the



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petitioner, submitted that pursuant to the order passed by this Court, the matter went back to the file of the Appellate Tribunal. Both the parties were asked to furnish the valuation. Accordingly, both the parties furnished the valuation, and the Appellate Tribunal through order, dated 14.11.2024, fixed the value in the following terms :

“At that stage, it is necessary to indicate that even appellant has given the valuation of the property in different years upto the current year. It would be after noticing that to save the property from auction value has to be taken on the current price and accordingly we are unable to accept the prayer of appellant to determine the value of the property at the rate when it was purchased rather we are in agreement with the prayer of the respondent and accordingly accept the value of the property on the present rate which is Rs.1944/- per square feet, while according to the appellant it was Rs.800/- per square feet for residential and Rs.1120/- square feet for commercial in the year 2014-15 while in the year 2023-24 it was Rs.11000/- square meter. In any case even appellant have given the current rate of the property with the old rate. However, we would be taking present rate of the property for the reasons given above and direct the appellant to pay the amount for the land to the extent of 75% of area of the property in question with its multiplication with Rs.1944/-. The amount arising out of the aforesaid calculation would be deposited by the appellant within three months from the date of this order, otherwise consequences to follow.

With the aforesaid, the appeals are disposed of.”



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4. The learned senior counsel submitted that the Honourable Tribunal was informed that already a clarification petition has been filed before the High Court and the same is pending. On being informed about the same, the Tribunal had orally observed that as and when any clarification is given by the High Court, the order passed by the Tribunal will be modified. Accordingly, the matter stands listed for hearing today.

5. Mr.Kumaraguru, learned senior panel counsel appearing on behalf of the respondents, submitted that this Court while passing the order in the Writ Petitions made it clear that the Appellate Tribunal can exercise its jurisdiction under Rule 20 of the Rules and accordingly, the Tribunal has also exercised its jurisdiction and passed orders and hence, no clarification is required at this stage.

6. The learned senior counsel appearing for the petitioner, in reply to the above submission, brought to the notice of this Court Rule 20 of the Appellate Tribunal for forfeited property (Procedure) Rules, 1989. The said



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Rule is extracted hereunder :

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“20. Orders and directions in certain cases

.-Notwithstanding anything contained in these rules, the Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Form (See rules 5 and 6) Before The Appellate Tribunal For Forfeited Property, New Delhi Memorandum Of Appeal Section 68-O(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) F.P.A.No./M.P.No.....of.....20..... To be filled up by the office of the Appellate Tribunal. In the Matter of Shri/Smt.....Appellant; Versus (i) The Competent Authority, New Delhi/Bombay/Calcutta/Madras/Allahabad [Strike out whatever is inapplicable.].....Respondent (ii) Other respondents, if any.....

1. Authority passing the order appealed against:

Competent Authority, New Delhi/Bombay/Calcutta/Madras/Allahabad [Strike out whatever is inapplicable.]

2. Date of the order:

3. Date of service of the order:

4. Specify whether a hearing in person or through an authorised representative is desired:

5. Registered address of the appellant (including telephone No., if any, for the service of all notices, processes and communications):

6. Address of the Respondent:

(i) The Competent Authority, New Delhi/Bombay/Calcutta/Madras/Allahabad: (ii) Other respondents, if any:

7. Section or sub-section of the section of Narcotic Drugs and Psychotropic Substances Act,



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1985 under which the Competent Authority passed the order and which is appealed against:

8.Relief claimed:

(I) Specify whether the entire order is disputed:(ii)If only certain items of properties are disputed, enumerate them in an annexure.

9.Grounds of appeal (Annex a separate sheet if space is not sufficient).

(Signature of Appellant) Signature of Authorised Representative, if any.) Verification I,, the appellant/authorised representative of the appellant, do hereby declare that what is stated above is true to the best of my knowledge, information and belief. Verified today the day of, 20..... Place : Date :(Signature of the appellant or his authorised representative) Notes :- (1)The memorandum of appeal should be filed in quadruplicate accompanied by four copies of orders appealed against (one of which shall be a certified copy of the order appeal against or the original copy of it served on the appellant). Any enclosure will also be in quadruplicate. (2) The memorandum of appeal should be written in English or in Hindi and should set forth concisely and under distinct heads the grounds of appeal and should be without any argument or narrative and such grounds should be numbered consecutively. (3) It is enough if the memorandum of appeal is signed either by the appellant or the authorised representative. Where it is signed by the authorised representative, it should be accompanied by an authorisation of the appellant in his favour. (4) For further details see the Appellate Tribunal for Forfeited Property (Procedure) Rules, 1989 notified under sub-section(5) of section 68-O of the Narcotic Drugs and Psychotropic Substances Act,



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1985.”

7. A careful reading of the above Rule shows that the Tribunal can pass such orders as is expedient to give effect to the orders and to prevent any abuse of process or to secure the ends of justice. Thus, wide discretion is given to the Tribunal while exercising its jurisdiction under Rule 20 of the Rules.

8. In the case in hand, the notice under Section 6(1) of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act (SAFEMA) was issued on 13.02.1980. The property was sold in favour of the petitioners through two sale deeds dated 14.12.1994. The petitioners were informed about the forfeiture order passed by the competent authority dated 20.03.1998, and they were informed that the subject property has been forfeited. The petitioners were further informed that the appeal filed against the order of the competent authority was also dismissed by the Appellate Tribunal by order dated 09.12.1999. The further appeal that was filed by the petitioners before the second respondent was also dismissed by order dated 09.01.2001. Aggrieved by the same, the writ petitions were



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filed before this Court. The Writ Petitions were filed in the year 2003 and the same were taken up for final hearing only in the year 2022. Hence, it is quite evident that substantial delay has taken place only because of the delay caused by the Court in disposing of the writ petitions. Ultimately, when the writ petitions were disposed of by order dated 06.07.2022, this Court found that the petitioners are not to be blamed, but, however, the petitioners will have to pay the amount that is determined under Rule 20 of the Rules and accordingly, the matter was remitted back to the file of the 2nd respondent.

9. While undertaking the exercise of determining the amount, the Court has to necessarily keep in mind the substantial delay that has taken place in disposing of the writ petitions. The proceedings which started in the year 1980, ultimately, came to an end before this Court only in the year 2022. In the meantime, the petitioners purchased the property in the year 1994. Hence, this delay should not be put against the petitioners and the petitioners cannot be made to pay the amount that prevails as on today. The same will cause grave prejudice to the interest of the petitioners.



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10. The learned senior counsel appearing for the petitioner brought to the notice of this Court the order passed by the Division Bench of this Court in W.A.Nos.2731 & 2732 of 2003 dated 12.02.2024. The learned senior counsel specifically places reliance upon Paragraph No.34 of the order. By placing reliance upon that portion of the order, the learned senior counsel submitted that in order to secure the ends of justice, the petitioners can be directed to pay the amount as was prevailing at the time of purchase of the property, along with the interest at the rate of 6%, from the date of purchase till the date of actual payment.

11. This Court finds a lot of force in the above submission made by the learned senior counsel. This Court has already observed that the substantial delay that was caused by the Court should not be put against the petitioners. Hence, this Court is inclined to clarify Paragraph No.20 of the order. Paragraph No.20 of the order shall read as follows :

“20. In view of the above discussion, this Court is inclined to remand the matter back to the file of the 2nd respondent for the limited purpose of exercising its jurisdiction under Rule 20 of the Forfeited Property (Procedure) Rules, 1986 in order to enable the 2nd respondent to determine the amount and direct the petitioners to pay the same to the Central Government



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within the stipulated period. On the petitioners making such payment of the amount determined by the 2nd respondent, the property can be released from forfeiture. If the amount is not paid, the order of forfeiture can be confirmed and further action can be taken under the provisions of SAFEMA. The 2nd respondent shall pass appropriate orders in this regard within a period of twelve weeks from the date of receipt of a copy of this order. While determining the amount payable by the petitioners, the petitioners shall be directed to pay the amount equal to the market value of the property at the time of the purchase of the property on 14.12.1994, along with interest at the rate of 6%, from the date of purchase till the date of actual payment.”

12. In view of the above clarification given by this Court, it is left open to the petitioners to file an appropriate petition before the 2nd respondent, along with this order and get the order passed on 14.11.2024 rectified.

13. Accordingly, this Writ Miscellaneous Petition is disposed of in the above terms.

06.12.2024



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Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral citation : Yes/No

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