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W.A.No.2320 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE **S.M.SUBRAMANIAM**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

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The Competent Authority,
SAFEM (FOR) and NDPS Acts,
“UTSAV” No.64/1, G.N.Chetty Road,
T.Nagar, Chennai-600 017.

... Appellant

Vs.

1. T.Krishnaveni(Died)
2. T.Gnaneswaran (Died)
3. P.Balachandran (Died)
4. T.Murugadoss
5. T.Sasikala (Died)
6. T.Jaisankar (Died)
7. The Appellate Tribunal for forfeited property
4th Floor, LOK Nayak Bhavan,
New Delhi.
8. Renganathan
9. Suresh
10. Padma
11. Lalitha
12. Shanthi
13. Madan
14. Sudarshan
15. Srinivasan
16. Pavithra



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17. Iswariya

18. Sudarshan

(R8 to R10 brought on record as LR's of deceased R1, R11-LR of deceased R2, R12 to R14-LR's of deceased R3, R15 to R18-LR's of deceased R5 vide order dated 22.06.2023 made in CMP.Nos.6846, 6851, 6855 & 6848/2023)

19. Usharani

20. Arnukumar

21. Abinaya

(R19 to R21 brought on record as LR's of deceased R6 vide order dated 11.12.2023 made in CMP.No.27691/2023)

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 12.01.2017 passed in WP.No.5975 of 2001.

For Appellant : Mr.S.Makesh

For Respondents : Mr.B.Ravi for R19 to R21
R1, R2, R3, R5 & R6 - Died
R4, R8 to R18 – No Appearance
R7-Tribunal

J U D G M E N T

[Judgment of the Court was delivered by **S.M.SUBRAMANIAM, J.**]

The Writ Appeal has been instituted challenging the judgment delivered on 12.01.2017 in WP.No.5975 of 2001. Admittedly, actions under the provisions of the “Smugglers and Foreign Exchange Manipulators



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(Forfeiture of Property) Act, 1976” [hereinafter after shall be referred to as “SAFEMA” was initiated against the deceased respondent. The husband of the respondent was initially detained under the COFEPOSA Act. Consequently, notice under Section 6(1) of SAFEMA was issued by the competent authority on 18.09.1979. The deceased Seshammal also received Section 6(1) notice on the same day on 18.09.1979. However, the Competent Authority passed an order under Section 7(1) of SAFEMA dropping all further actions accepting the statement of defence submitted by the affected person. Subsequently, two sons of deceased Seshammal were detained in different proceedings. Consequently, further 6(1) notice was issued to the deceased Seshammal and to her sons. Perusal of the documents would reveal that several proceedings were initiated both before the Appellate Tribunal and before the High Court either challenging the orders of the Appellate Tribunal or the order passed by the Competent Authority under Section 7(1) of SAFEMA. Mr.Gnaneswaran/2nd respondent, Son of Seshammal, herein also died and his legal heirs are impleaded. The issues and litigations relating to Section 6(1) notice and 7(1) order is continuing from the year 1979 onwards. The matters are pending for the past about 44 years and finally the Writ Court elaborately considered the issues relating to



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the original notice issued under Section 6(1) of the Act and subsequent final orders passed under Section 7 by the Competent Authority. The writ Court made a categorical finding with reference to the grounds raised between the parties. The Writ Court, while adjudicating the facts found that the deceased Seshammal possessed 15 sovereigns of gold, which was gifted by her parents and she produced receipt before the Competent Authority. From and out of the sale proceeds of the jewellery, she purchased a house property, which was the subject matter under Section 6(1) notice. Mr.Makesh, learned counsel for the appellant would question the credibility of the receipt produced by the deceased Seshammal and further contended that the onus of proof on the part of the affected person has not been fulfilled in the present case. Thus, the writ order is perverse. We are unable to accept the said contention in view of the fact that the genuinity of the receipt produced at that point of time long years before cannot be now tested. More so, the Writ Court in paragraph 29 has made a finding that the burden no doubt is on the person, who is in possession of the property to explain their sources. But, once an explanation is forthcoming, then naturally it is for the competent Authority to prove the contrary.



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2. In the present case, the deceased Seshammal produced receipt for possession of gold jewellery. When such a receipt is produced, the burden of proof shifted on the competent authority to disprove the same, which was not done either before the Tribunal or before the writ Court. That being so, the Writ Court allowed the writ petition by setting aside the orders of the competent Authority and Tribunal. The Writ Court further found that the case on hand is not fit for remand on account of efflux of time. Therefore, we do not find any reason to interfere except by confirming the writ order impugned. Consequently, Writ Appeal stands dismissed. No costs.

[S.M.S., J.] [C.K., J.]
25.07.2024

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Index : Yes

Speaking order : Yes

Neutral Citation : Yes/No

To
The Appellate Tribunal for forfeited property
4th Floor, LOK Nayak Bhavan,
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