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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11614/2024 & CM APPL. 48285/2024

SHRI KAMLESH KHANTWAL & ANR. .....Petitioners

Through: Mr. K. Venkatraman, Mr. Avinash, Mr. Sarthak Malhotra and Ms. Vineeta Bansal, Advocates.

versus

THE COMPETENT AUTHORITY AND ADMINISTRATOR SAFEM FOP A AND NDPS .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **22.08.2024**

1. The brief factual background leading to the filing of the petition, as presented in the petition, is summarised as follows:

1.1. On 17th January, 2023, an FIR No. 23/2023 was registered against Petitioner No. 1– Sh. Kamlesh Khantwal *alias* Kamlesh Kumar, who was found to be in possession of 1050 grams of Cannabis, punishable under Section 20 read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985[1].

1.2. After registration of the FIR, the investigating officer conducted a financial investigation into the properties acquired by Petitioner No. 1, both in his name and in the names of his relatives, which were suspected to have been purchased with illicit income generated through drug trafficking

[1] "NDPS Act"

activities. Based on these investigations, a freezing order (No. 01/2023) was issued on 19th April 2023 under Section 68F(1) of the NDPS Act. This order resulted in the seizure of various assets, including vehicle, bank account and immovable property—a plot of land measuring 0.016 hectares, bearing Khatouni No. 29, situated in Village Lalpur, Patti Sukhro, PS Kotdwar, Pauri Garhwal, Uttarakhand, valued at INR 12 lakhs[2].

1.3. Following the issuance of the freezing order, notices were sent to the affected persons, including Petitioner No. 1, who subsequently appeared before the competent authority and filed objections to the seizure. After considering these objections, the competent authority, through an order dated 17th May, 2023, released the vehicle and the bank account held by Petitioner No. 1 with Union Bank of India. However, the seizure concerning the Subject Property was confirmed.

1.4. Aggrieved by this confirmation of seizure, the Petitioners filed an appeal against the order dated 17th May, 2023 [FPA-ND-624/DLI/2023] before the Appellate Tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976[3]. However, through the impugned order dated 07th May, 2024[4], the Appellate Tribunal dismissed the appeal, thereby upholding the seizure of the Subject Property.

2. The Petitioners have challenged the impugned Appellate Order on several grounds, primarily arguing that the Appellate Tribunal failed to consider critical evidence regarding the acquisition of the Subject Property. The Petitioners contend that, as corroborated by the statement of Mr. Sundar Lal Gaur, the seller of the Subject Property, the sale consideration was

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[2] "Subject Property"
[3] "SAFEMA"
[4] "Appellate Order"

transferred to him in tranches over a period of time, beginning in 2010. According to the Petitioners, possession of the Subject Property was handed over to them in 2012-13, and they have been utilizing the land for farming and agricultural purposes since that time. It is further contended that the Petitioner No.1 retired in the year 2016 and received pension funds, which was later used to pay the remaining amount to the seller. Further, the Petitioners point out that the seller, Mr. Gaur, has admitted to receiving an amount of INR 6 lakhs from Petitioner No.1 a considerable time ago, as specifically mentioned in the sale deed dated 07th January, 2021. Based on these facts, the Petitioners contend that the financial transactions related to the acquisition of the Subject Property were effectively completed by 2016. Consequently, they argue that the mere fact that the formal registration of the Subject Property was completed in 2021 should not serve as the sole basis for the seizure thereof under the NDPS Act. The Petitioners assert that the Appellate Tribunal's decision to uphold the seizure was based on an erroneous understanding of the timeline and nature of the transactions, and therefore, the impugned Appellate Order should be set aside.

3. The Court has considered the aforenoted contentions but remains unpersuaded. The crux of the matter revolves around the sale deed dated 7th January 2021, which falls within the six-year period prior to the date of the incident, thereby rendering the Subject Property liable for seizure under the provisions of NDPS Act—a fact not in dispute. Therefore, the issue before the Court is the determination of the specific date of the sale of the Subject Property. The Petitioners argue that since they had allegedly paid the sale consideration in tranches over an extended period, beginning as early as 2010, the actual date of the sale deed should be deemed prior to the recorded

date. They contend that the transaction was substantially completed long before the formal execution of the sale deed, and therefore, the Subject Property should not be subject to seizure. However, in the opinion of the Court, this submission is both factually and legally untenable.

4. Under the Transfer of Property Act, 1882, read with provisions of the Registration Act, 1908, a sale of immovable property is legally recognized and confirmed only upon the execution of a registered sale deed. The mere payment of sale consideration, without a corresponding registered document evidencing the transfer of ownership, does not confer legal title or rights in the property. The execution and registration of the sale deed on 7th January, 2021, is the legally binding act that transferred the ownership of the Subject Property, and any prior informal arrangements or payments made by the Petitioners do not alter this legal position. Furthermore, there is no documentary evidence on record to suggest that there was any prior agreement to sell or transfer of possession of the Subject Property in favour of the Petitioners. In absence of such evidence, the Petitioners' claim that the sale was effectively completed earlier is speculative and unsupported by the material on record. Thus, the presumption that the Petitioners seek to draw is contrary to established law and the evidence presented.

5. Additionally, as noted in the impugned Appellate Order, the Petitioners failed to produce any bank statements or other financial documents to substantiate the source of the funds used for the purchase of the Subject Property. This lack of credible evidence further weakens their case, as the source of funds is a critical factor in determining the legality of the transaction, particularly in cases involving allegations of drug trafficking. In view of the above circumstances, given the absence of proof

of any legitimate source of income for purchasing the Subject Property, the presumption would be that the same is acquired from the proceeds of crime of drug trafficking. It not clear whether the statement of account from the year 2016[5], was part of the record before the Appellate Tribunal, as it is contrary to the observations made in Paragraph No. 5 of the impugned Appellate Order. Nonetheless, even if one were to take the said statement into consideration, it reflects transactions of the year 2016, which are much earlier than the transactions involving withdrawals from the bank accounts related to the purchase of the Subject Property. Therefore, these transactions cannot be directly correlated to the sale of the property in question.

6. Furthermore, the statement of Mr. Sundar Lal Gaur, which has been relied upon, also does not advance the case of the Petitioners. His statement is to the following effect:

> *"I, Sundarlal Gaur, aged 50 years, son of Shri Mahidhar Prasad Gaur, resident of Shivpur, Patti - Sukhrau, Tehsil Kotdwar, District - Pauri Garhwal, Uttarakhand, in my state of sound mind and stable intellect, execute this sale deed in the following manner: I have transferred to you my own share of land and land in possession of area 1700 square feet i.e. 160 square meters in Khata Khatauni No. 29, Field No. 61 of Village - Lalpur, Patti - Sukhrau, Tehsil - Kotdwar, District - Pauri Garhwal, Uttarakhand. It has been sold to the buyer Mrs. Sarojini Devi Khantwal, wife of Mr. Kamlesh Kumar Khantwal, resident of village Lalpur, Patti-Sukhrau, Tehsil - Kotdwar, District - Pauri Garhwal, Uttarakhand for Rs. 6,00,000/- (six lakhs) and the entire sale amount was received at home in cash long ago. Now nothing is left to be received from the buyer. The land sold is pure and clean and there is no previous residence or sale, donation etc. In the east side of the sold land, there is land of Shri Dalveer Singh, in the west there is a 10 feet wide road, in the north there is land of Shri Dalveer Singh and in the south there is land of Shri Pramod. Whatever landholding rights on the sold land we the seller had till date, all those rights will be given to you the buyer after today. The entire responsibility of any dispute arising before today regarding the sold land will be of the seller. You are the buyer of the sold land ..."*

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[5] Annexed as Annexure P-2

7. The above extract indicates that Mr. Sundar Lal Gaur has only confirmed receiving payment of INR 6 lakhs in cash. However, this confirmation does not prove that the sale consideration amount was paid from the pension funds or the savings of Petitioner No. 1, as contended. Moreover, the sale deed also does not specify the exact date of payment and therefore, in absence thereof, the presumption must be that the sale consideration was paid on the date of execution of the sale deed, i.e. 07^{th} January, 2021. Since this date falls within the six-year period preceding the date of the incident, the Court finds no infirmity in the impugned Appellate Order.

8. In light of the above, there is certainly a reason to believe that the Subject Property in relation to which such inquiry or investigation is being conducted is an illegally acquired property. The Court finds no room for entertaining the present petition and accordingly, the same is dismissed, along with pending application.

9. It is made clear that the observations made herein would not influence the adjudication of the proceedings in the FIR registered against the Petitioner which is stated to be at the stage of trial before the concerned Courts.

SANJEEV NARULA, J

AUGUST 22, 2024

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