



2024:DHC:8721-DB



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

+ **LPA 1108/2024 & CM APPL. 65313/2024**

NARENDRA KUMAR RAIPetitioner

Through: **Mr. Dvyesh Pratap Singh and
Mr. Amit Sangwan, Advocates**

versus

**THE COMPETENT AUTHORITY, SAFEMA, NDPS ACT,
NEW DELHI**

.....Respondent

Through:

% **Date of Decision: 8th November, 2024**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, CJ : (ORAL)

1. Present letters patent appeal has been preferred by the appellant assailing the impugned order dated 23rd October, 2024 passed by learned Single Judge Bench of this Court whereby the underlying writ petition being W.P.(C) No.14940/2024 filed by the appellant was dismissed, thereby affirming the order dated 24th August, 2024 passed by the Appellate Tribunal under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short 'SAFEMA').

2. The facts obtained in the present appeal disclose a chequered history of this case. Shorn of unnecessary details, only those facts which are germane to the dispute at hand and as noted in the impugned order, are being referred to hereunder:



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- a. A detention order dated 4th December, 1990 was passed against Mr. Birendra @ Virender Kumar Rai, appellant's brother under section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1978 (for short 'PITNDPS Act'). Since Mr. Birendra was covered under section 68A(2)(c) of the NDPS Act, provisions of Chapter VA of the NDPS Act applied to his relatives under Section 68A(2)(d) of the said Act. Case no.48/1983 is stated to have been registered against the appellant as well as his father and brothers. The proceedings resulted in an order dated 14th January, 1993 passed by the Competent Authority forfeiting the property bearing no. B-37/47A, Birdopur Police Station, Bhelupur, District Varanasi.
- b. On an appeal preferred by the appellant before the Appellate Tribunal for Forfeited Property (hereinafter referred to as "ATFP"), by the order dated 23rd March 1993, the matter was remanded for *denovo* proceedings. An opportunity to lead evidence under section 68-I of the NDPS Act was also provided.
- c. In compliance with the remand order, the Competent Authority by its order dated 12th August, 1993 directed forfeiture of the property *qua* the appellant's share on the ground of non-submission of documentary evidence despite an opportunity having been provided to the appellant.
- d. Thereafter, the appellant preferred a statutory appeal before the ATFP along with an application seeking condonation of delay on the ground that the order dated 12th August, 1993 was never served upon him and that he had no knowledge of the said



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order till 6th October, 1997. The said submission was disbelieved by the ATFP and *vide* order dated 24th August, 1999, the appeal of the appellant was dismissed.

- e. Challenging the dismissal order dated 24th August, 1999, the appellant preferred a writ petition being W.P.(C) 23221/2013 which is stated to have been dismissed as not pressed on 27th November, 2013.
- f. In the meanwhile, by the order dated 11th October, 2013, the appellant was directed to surrender and deliver the possession of the property in question to the concerned agencies.
- g. A fresh writ petition being W.P.(C) 66885/2013 was filed by the appellant before the High Court of Judicature at Allahabad challenging the orders dated 11th October, 2013, 24th August, 1999 and 12th August, 1993. The said writ petition was dismissed *vide* order dated 9th December, 2013, *inter alia*, observing that the appellant had not challenged the appellate order forfeiting the property before any High Court nor did the appellant challenge the same even after the order passed by the Supreme Court dated 23rd March, 2004 in Criminal Appeal no.848-856/1998.
- h. The order dated 9th December, 2013 passed by the High Court of Judicature at Allahabad was further challenged before the Supreme Court in SLP No.8644/2014 which was also dismissed on 17th April, 2014 with the observation that the said dismissal would not come in the way of any pending proceedings.
- i. Simultaneously, the other brothers of the appellant who claim to have a combined 5/6th share in the property, continued the



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proceedings which resulted in the order dated 11th March, 2020 passed by the Competent Authority under the SAFEMA. The Competent Authority appears to have quashed the forfeiture order *qua* the brothers of the appellant while confirming the forfeiture of the appellant's share in the said property.

j. The appellant challenged the order dated 11th March, 2020 before the ATFP. The Appellate Tribunal *vide* its order dated 27th August, 2024 dismissed the appeal holding the same to be not maintainable.

k. The order dated 27th August, 2024 of the ATFP was challenged by the appellant by preferring the underlying writ petition. Learned Single Judge by the impugned order dated 23rd October, 2024 dismissed the underlying writ petition. Hence, the present appeal has been filed.

3. Learned counsel appearing for the appellant urges the same submissions which were submitted before the learned Single Judge. He emphasises that the order dated 12th August, 1993 was passed behind his back which was challenged by him in the year 1997 before the ATFP. He states that rather than appreciating the reasons for delay, the Appellate Tribunal dismissed the same without even appreciating the merits of the matter. He states that the property has been established to be a joint family property acquired by way of a registered common Sale Deed on 19th October, 1983. He states that the Competent Authority itself in the order dated 11th March, 2020 has observed that the purchase of the property itself is six years prior to the alleged offences under the PITNDPS Act, thus it cannot be a property purchased out of the proceeds of crime. He states that the



appellant being admittedly one of the brothers having share in the same property, could not have been deprived of his right. He also states that the forfeiture of the share of the appellant in the said property amounts to discrimination, violating Articles 14 & 16 of the Constitution of India. He states that the learned Single Judge in exercise of powers under Article 226 of the Constitution of India ought to have appreciated the apparent illegality committed by the Competent Authority by singling the appellant's share from the said property, when it is established that the property cannot be forfeited as per law. He states that the error committed by the learned Single Judge be rectified and the order dated 11th March, 2020 of the Competent Authority and order dated 27th August, 2024 passed by the ATFP, be quashed and set aside.

4. This Court has heard the submission of learned counsel for the appellant and minutely examined the documents on record.

5. On a close scrutiny of the record, this Court finds that after the ATFP had remanded the matter *vide* its order dated 23rd March, 1993 to the Competent Authority for *denovo* proceedings, after providing the appellant an opportunity to lead documentary evidence. Thereafter the Competent Authority had passed another order dated 12th August, 1993 forfeiting the property *qua* the appellant. It is clear from the perusal of the order dated 12th August, 1993 that the appellant had failed to take advantage of the remand order and did not produce any documentary evidence in his favour. It appears that the appellant had filed an appeal before the ATFP against the said order, along with an application seeking condonation of delay in filing the said appeal. Though the appellant states that he did not receive the order dated 12th August, 1993 till 6th October, 1997, this Court finds that the ATFP in



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the order dated 24th August, 1999 had returned a specific finding regarding the receipt of the order dated 12th August, 1993 by the appellant. On that basis, the ATFP had dismissed the appeal being time barred.

6. The order dated 24th August, 1999 of the ATFP as well as the order dated 12th August, 1993 of the Competent Authority under SAFEMA was challenged by the appellant before the High Court of Judicature at Allahabad *vide* W.P.(C) No. 66885/2013. The said writ petition was dismissed *vide* order dated 9th December, 2013. Perusal of the order dated 9th December, 2013 reveals that learned single Judge of the Allahabad High Court observed that the appellant had not challenged the appellate order forfeiting the properties before any High Court or even after the order passed by the Supreme Court dated 23rd March, 2004 in Criminal Appeal No. 848-856/1998 and had only challenged the consequential orders.

7. It is also clear from the record that the appellant had assailed the order dated 9th December, 2013 before the Supreme Court in SLP No. 8644/2014. This appeal too was dismissed by the Supreme Court *vide* order dated 17th April, 2014 with an observation that the said dismissal would not come in the way of any pending proceedings.

8. It is apparent from the aforesaid facts that the appellant had in fact laid a challenge to the order dated 12th August, 1993 of the Competent Authority forfeiting his share in the property commencing from the ATFP to the High Court of Judicature at Allahabad and finally with the Supreme Court dismissing the SLP *vide* order dated 17th April, 2014. In the considered opinion of this Court, once the challenge to the forfeiture proceedings has been concluded against the appellant right up till the Supreme Court, the appellant cannot now



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reagitate the very same issue by virtue of the underlying writ petition.

9. It appears that the appellant is now trying to take advantage of the order dated 11th March, 2022 passed by the Competent Authority whereby the proceedings for forfeiture of the share of the brothers of the appellant in the property were dropped, while forfeiture of the share of the appellant was maintained. The appellant laid the challenge to the forfeiture of his share in the property before the ATFP which, by the order dated 27th August, 2024, dismissed the same on the ground that the appeal is not maintainable. The learned Single Judge has extracted the order of the ATFP in Para 2.8 of the impugned order and the same is not being reproduced herein *in extenso*, for the sake of brevity. This order of the ATFP was challenged by way of the underlying writ petition. In the considered opinion of this Court, this exercise of the appellant appears to be an attempt to have a second bite at the cherry. This is for the reason that once the challenge to the order dated 12th August, 1993 forfeiting the share of the petitioner in the property was challenged in accordance with the law and the provisions of SAFEMA, reagitation of the very same issue on the basis of the order dated 11th March, 2020 of the Competent Authority is impermissible in law.

10. Besides, we find that the learned Single Judge has aptly observed that a Constitutional Court in proceedings under Article 226 of the Constitution of India, does not sit as a Court of appeal and considers only if the impugned order is fraught with manifest arbitrariness or illegality in the findings rendered by the Appellate Tribunal. Having regard to the aforesaid observations by the Court, we too do not find any such infraction of law or fundamental rights of the appellant in the entire proceedings, either before the Competent



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Authority or the ATFP, nor before the learned Single Judge. Thus, we do not find any merits in the said appeal.

11. Resultantly, the appeal is dismissed along with pending applications, if any.

MANMOHAN, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 08, 2024/*rl*