

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2926 OF 2017

ALONG WITH

INTERIM APPLICATION NO.3542 OF 2019

- | | | |
|-------------------------------------|---|------------------|
| 1. Ramesh Bapurao Potdar |] | |
| 2. Leela Bapurao Potdar |] | |
| 3. Rashmi Ramesh Potdar |] | |
| 4. Shobha Purshottam Potdar |] | |
| 5. Nilesh Purshottam Potdar |] | |
| 6. Supriya Purshottam Potdar |] | |
| 7. Prakash Rajaram Potdar |] | |
| 8. Sandeep Vasant Potdar |] | |
| Petitioner Nos.2 to 8 represented |] | |
| through their Constituted Attorney: |] | |
| Ramesh Bapurao Potdar |] | |
| All residents of Malkapur, |] | .. Petitioners / |
| Tal. Shahuwadi, Dist. Kolhapur |] | Applicants |

Versus

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|---|---|----------------|
| 1. The Union of India |] | |
| 2. The Joint Secretary, |] | |
| Ministry of Finance, |] | |
| Department of Economic Affairs, |] | |
| Government of India, New Delhi |] | |
| 3. The Secretary, |] | |
| Ministry of Law and Justice, |] | |
| Government of India, New Delhi |] | |
| 4. The General Manager, |] | |
| Department of Currency Management, |] | |
| Reserve Bank of India, Fort, Mumbai |] | |
| 5. The Governor, |] | |
| Reserve Bank of India, Fort, Mumbai |] | |
| 6. The Central Board, |] | |
| Reserve Bank of India, Fort, Mumbai |] | |
| 7. Asst. Director of Income Tax (Inv.), |] | |
| Unit-III(1), Kolhapur |] | |
| 8. Income Tax Officer, |] | |
| Ward 1(3), Income Tax Office, Kolhapur |] | .. Respondents |

Mr. Udaya Sankar Samudrala with Mr. Sujit Upadhyay and Mr. Shivesh Upadhyay, Advocates for the Petitioners-Applicants.

Mr. D.P. Singh, Advocate for Respondent Nos.1 to 3.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Dhaval Patil, Mr. Shreyas Menkudale, Advocates, i/by K. Ashar & Co., for Respondent Nos.4 to 6.

Mr. Arjun Gupta, Advocate for Respondent Nos.7 and 8.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ**

DATE : 27TH FEBRUARY 2025.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. By a Notification dated 8th November 2016 issued by the Ministry of Finance, specified bank notes in the denomination of Rs.500/- and Rs.1,000/- were declared not to be legal tender. The said specified bank notes were to be recalled in the manner specified in the said notification from 10th November 2016 to 30th December 2016. The time to deposit such specified bank notes in the bank account of an individual was permitted till 30th December 2016. It is the case of the petitioners that they jointly were holding aforesaid specified bank notes of the value of Rs.20,00,000/- on 8th November 2016. They intended to deposit the same in their respective bank accounts by 30th December 2016. However on 26th December 2016, a search and raid was conducted at their residence and specified bank notes of the value of Rs.20,00,000/- as well as silver ingots for the value of Rs.26,99,320/- came to be seized. A Panchanama dated 26th December 2016 came to be prepared by the Police Authorities. The

petitioners received summons from the Assistant Director of Income Tax, Unit-III, Kolhapur on 28th December 2016 and 6th January 2017 summoning them for recording their statements under Section 131 of the Income Tax Act, 1961. After their statements were so recorded, the Assistant Director of Income Tax (Investigation), Unit-III, Kolhapur issued a letter dated 10th January 2017 to the Police Inspector, Shahuwadi Police Station, Kolhapur in which it was stated that on the basis of enquiries made, the said office had decided not to seize the cash of Rs.20,00,000/- and silver ingots at the said juncture. The necessary information was to be forwarded to the jurisdictional Assessing Authority. Acting on the said communication, the Police Inspector, Shahuwadi Police Station on 14th January 2017 informed the petitioners about the aforesaid and directed them to take back the specified bank notes of the value of Rs.20,00,000/- as well as the silver ingots. After receiving the same, the petitioners on 17th January 2017 visited the specified office of the Reserve Bank of India, Mumbai to deposit the aforesaid notes. The same were however not accepted and the petitioners were informed that after 30th December 2016 it was not permissible to accept the same. After issuing a notice in that regard, the petitioners have approached this Court praying that the 4th respondent – the General Manager, Department of Currency Management, Reserve Bank of India be directed to accept the aforesaid specified bank notes.

2. Mr. Udaya Sankar Samudrala, learned counsel for the petitioners submitted that the specified bank notes of the value of Rs.20,00,000/- came to be seized from the petitioners prior to 30th December 2016. The said notes remained in custody with the Police Authorities until 10th January 2017 when the Income Tax Authorities stated that they did not intend to seize the specified bank notes worth Rs.20,00,000/-. The said specified bank notes were thus returned to the petitioners on 14th January 2017 which was after the designated date of 30th December 2016 by which time such exchange was permissible. The petitioners could not be blamed for the aforesaid and it was the duty of the Police Officers to specifically note the numbers of the said specified bank notes. The same was however not done; thus resulting in difficulties in receiving an amount equivalent to the same. He referred to the affidavit-in-reply filed on behalf of the Income Tax Authorities clarifying the aforesaid aspects. The learned counsel also referred to the judgment of the Co-ordinate Bench at Nagpur in Writ Petition No.507 of 2021 (*Sunny s/o Ratansingh Mago Vs. The Union of India and Ors.*) decided on 30th November 2023. It was thus submitted that the petitioners were entitled for return of the value of the aforesaid specified bank notes.

3. Mr. Venkatesh Dhond, learned Senior Advocate appearing for respondent nos.4 to 6 referred to the provisions of Section 5(a) of the

Specified Bank Notes (Cessation of Liabilities) Act, 2017 and the Notification dated 12th May 2017 issued by the Ministry of Finance to contend that it would be necessary for the petitioners to furnish serial numbers of the specified bank notes that had been seized by the Police Authorities prior to 30th December 2016. In absence of indication of such serial numbers, the Reserve Bank of India was precluded from accepting the aforesaid specified bank notes and thereafter exchanging them for legal tender. He sought to distinguish the judgment in the case of *Sunny s/o Ratansingh Mago (supra)* to submit that in the said case the serial numbers of the seized notes were available. It was thus submitted that in view of the aforesaid position, no relief could be granted to the petitioners.

Mr. Arjun Gupta, learned counsel appearing for 7th and 8th respondent referred to the affidavit-in-reply filed on behalf of the said respondents. According to him, the position of the Income Tax Department was made clear in the communication dated 10th January 2017 issued to the Police Authorities. The matter was now between the petitioners and the Reserve Bank of India.

4. We have heard the learned counsel for the parties and we have perused the documentary material on record. The factual aspects giving rise to the present proceedings are not in dispute. Specified bank notes of

the value of Rs.20,00,000/- came to be seized from the petitioners on 26th December 2016 prior to deposit of the same by the petitioners. Such deposit was permissible till 30th December 2016 by furnishing an explanation in that regard along with submission of a declaration. By the time the Income Tax Department directed release of the specified bank notes on 10th January 2017 and they were actually received by the petitioners from the Police Authorities on 14th January 2017, the said specified bank notes ceased to be legal tender. After the specified date it was not permissible for the Reserve Bank of India to have accepted the said specified bank notes in the light of the provisions of the Act of 2017 read with the Notification dated 12th May 2017. In the aforesaid backdrop, the entitlement of the petitioners to the prayers made in the writ petition would be required to be considered.

5. Today, the learned counsel for the petitioners tendered a copy of the affidavit of the petitioner no.1 dated 24th October 2018 stating therein that in view of the communication dated 10th January 2017 issued by the Income Tax Department directing release of the specified bank notes, the same were returned to the petitioners by the Senior Inspector of Police. The serial numbers of these currency notes in the denomination of Rs.500/- have been stated in Annexure-I to the said affidavit. Since the serial numbers of the specified bank notes that were seized from the petitioners and returned thereafter are now available, the apprehension

expressed on behalf of the Reserve Bank of India that the value of the aforesaid specified currency notes could not be paid to the petitioners in the absence of such serial numbers is taken care of. The availability of the serial numbers of the specified bank notes would also satisfy the requirement of Rule 2(a) of the Rules of 2017. We therefore do not find any reason to deny the petitioners the benefit of receiving the value of the aforesaid specified bank notes. As stated above, the seizure of the said specified bank notes was on 26th December 2016 which is prior to the permissible date of deposit which was 30th December 2016. The Income Tax Department having indicated that it did not intend to seize the said specified bank notes pursuant to which the Police Authorities returned the same to the petitioners on 14th January 2017, we find that the petitioners can be permitted to deposit the aforesaid specified bank notes for the value of Rs.20,00,000/- bearing the serial numbers indicated in Annexure-I to the affidavit dated 24th October 2018 with the 4th respondent. This would facilitate receipt of legal tender for the same value by the petitioners.

6. In that view of the matter, the following directions are issued :-

- (i) The petitioners shall deposit the specified bank notes bearing the requisite serial numbers indicated in Annexure-I to the petitioner no.1's affidavit dated 24th

October 2018 with the 4th respondent within a period of one week of receipt of copy of this judgment.

- (ii) The 4th respondent shall verify the said specified bank notes with their numbers as indicated in Annexure-I to the affidavit of the petitioner no.1 dated 18th October 2018. After completing the necessary formalities, the amount equivalent to the said specified bank notes shall be made over to the petitioner no.1 on behalf of all the petitioners.
- (iii) While accepting the said amount, the 1st petitioner shall indemnify the 4th respondent from any future claim of petitioner nos.2 to 8. The needful be done within a period of seven days of receiving the specified bank notes referred to above from the petitioner no.1.

7. Rule is made absolute in aforesaid terms with no order as to costs.
The interim application is also disposed of.

[M.M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]