IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2025

PRONOUNCED ON : 23.01.2025

CORAM:

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

and

THE HONOURABLE MR.**JUSTICE M.JOTHIRAMAN**

W.P.No.20478 of 2008

Umrao Bai … Petitioner

Competent Authority
Smugglers and Foreign Exchange
Manipulators (Forfeiture of Property) Act 1956
G.N.Chetty Street
Chennai. ... Respondents

PRAYER : Writ petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari to call for the impugned records connected with the proceedings C.No.OCA/MDS/555/77 dated 31.07.2008 on the file of the CA functioning under the Smuggler and Foreign Exchange Manipulators (Forfeiture of Property) Act 1956 and quash the same.

For Petitioner : Mr.B.Kumar. Sr.Counsel
for Mr.S.Ramachandran
For Respondents : Mr.AR.L.Sundaresan
Addl. Solicitor General of India

Assisted by Mr.Prasad Vijayakumar, SPC

O R D E R

(The Order of the Court made by Justice **M. JOTHIRAMAN**)

Under assail is the order dated 31.07.2008, passed by the Competent Authority functioning under the SAFEM (FOP) & NDPS Acts, Chennai in Proceedings C.No.OCA/MDS/555/77.

2. The Competent Authority has passed the order under Section 11 & 19(1) of SAFEM (FOP) Act, 1976 dated 31.07.2008, The order directed the writ petitioner to hand over possession of the property to the District Collector, Chennai. The copies of the order were marked to the Writ petitioner, District Collector, Chennai and to the Vendor/Siddhi Halima.

3. Further, the Competent Authority issued an intimation regarding the forfeiture proceedings vide letter dated 31.07.2008, to the petitioner and requested to hand over the possession of the property to the District Collector, Chennai within 30 days of service of this letter.

4. The case of the petitioner in brief as follows :-

(i)The petitioner's husband was a tenant of the property situated at No.134, Dr.Natesan Road, Chennai. The property was originally owned by S.Ishrak Umma and U.O.Sithi Alima Beevi who purchased it on 16.09.1970 under a registered document from one R.Sarojini and her husband/Ramachandran. When the petitioner and her husband continued as tenants of the property, the above said two ladies were offered to sell the third floor of property measuring 900 sq.ft along with a proprietary 1/4th share of the land measuring 1058 sq.ft. The petitioner purchased the third floor property at No.134, Natesan Road, Chennai, for a valuable consideration of Rs.3.50 lakhs under a registered sale deed on 20.04.1999. Suddenly, the petitioner received a communication from the respondent on 06.08.2008 by registered post. By proceedings dated 31.07.2008, the respondent had issued a notice directing the petitioner to hand over possession of the premises within 31 days from the date of receipt of the notice purporting to invoke the powers under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 [herein after referred to as "SAFEM (FoP) Act". The

Competent Authority had passed an order on 12.07.1995, forfeiting 50% of Sithi Alima's share in the property. Therefore, the respondent directed the petitioner to hand over the possession of the entire third floor property, which she had purchased.

(ii) Immediately on receipt of notice, the petitioner submitted a request to the respondent on 11.08.2008, asking for a copy of the order referenced in the communication to be supplied to her husband. However, the respondent refused to even meet with the petitioner's husband. The petitioner is a bonafide purchaser who acquired the property for adequate consideration. The respondent is not entitled to invoke the provisions of Section 19 of the Act and take possession of the property without issuing a notice to the petitioner and holding an enquiry to determine whether she was a bonafide purchaser. The compliance with natural justice and the requirement of an opportunity of hearing are essential. The Competent Authority failed to recognise that the general provisions of law such as Partition Act, are not abrogated merely because of the power exercised under Certain Act 1976 where a person is entitled to a half-share in a movable property, his right is limited to applying for partition, and by no process of law, he could take possession of the entire property. The vendor of the petitioner, Sithi Alima, is not a smuggler. She appears to be an heir to a person involved in the Act. Even, if she is considered a relative within the meaning of Section 2(b) of the Act, the property of such relative is not subject to forfeiture unless a nexus is established between the property and illegal activities of the principal offender. The petitioner is entitled to demonstrate that such an order does not exist or that an order of forfeiture was made without jurisdiction. Hence, this writ petition.

5. Mr.B.Kumar, learned Senior Counsel appearing for the petitioner would submit that the property was originally owned by S.Ishraq Umma and U.O.Sithik Alima Beevi who purchased it on 16.09.1970 and sale was executed by two ladies in favour of the petitioner on 20.04.1999. The sale deed recites that the property initially belonged to R.Sarojini, who purchased it with her own funds and registered the document in 1968. The other persons mentioned in the sale deeds are the legal representatives of the said Ishraq Umma. Subsequently, 50% of the property came to be owned by U.O.Subaya Beevi, and 50% belonged to Sithik Alima. The petitioner had purchased the third floor with UDS land which consists of a ground + three floors.

He contended that U.O.Sithik Alima's husband S.A.Yaseen was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 [herein after referred to as "COFEPOSA"] in the past making his wife a person affected. However, it appears that a notice under Section 6(1) was not issued to Sithik Alima, who forfeited 50% of her share in the right of title and interest in the property. The petitioner did not received any notice at any point of time. On 31.07.2008, the petitioner received a notice directing her to deliver 50% of her share in the right to title and interest in the property. The order under Section 19 seeking to take possession of 50% of the property, is contrary to the Act and is otherwise invalid.

6. The learned Senior Counsel would further submit that Section 9 states that where the source of only a part, being less than one half of the income, earnings or assets with which the property acquired has not been proved, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part and explanation to the Section makes its clear that Section 9 would apply fully to the facts of this case. Therefore, the petitioner must be called upon to deposit 1/5th value of the property as required under

Section 9 of the Act. The Tribunal has held in numerous cases that there cannot be an acquisition of a portion of the property. Any acquiring of a portion of a property would entail the application of Partition Act and the Central Government cannot do so by simply filing a suit for partition of one half share.

7. To strengthen his contentions, the learned Senior Counsel relied on the following orders of the Appellate Tribunal for forfeiture of property :-

(i) In the case of late ***Sankar Saha v. Competent Authority dated 28.08.1991 reported in 1992 ITR 124***, wherein it has been held that :-

> "*The order of the Competent Authority is liable to be set aside on another ground as well. The house with respect to which a notice under Section 6 had been issued to the appellant is one unit and it contains land and the construction made thereon. The competent authority had bifurcated this unit into two parts, namely the land underneath the house and the construction thereon. Such bifurcation is erroneous*

and impractical. The order of the Competent Authority as it stands, is also inexecutable. If the order, as it stands, were to be executed in a strict sense, then the competent authority shall have to remove the malba of the house for disposal which he may not find economical to do. The fact of the matter is that the house consisting of land and construction is to be treated as one unit and it is either to be forfeited as such or not. The impugned order cannot be allowed to stand for this reason also.

In the result, the appeal is allowed and the order of the competent authority set aside. The competent authority will redecide the case in the light of the observations made above.”

(ii) In the case of ***Jitendra Nath Saha v. Competent Authority dated 04.09.1991,*** wherein it has been held that :-

“*The forfeiture order of the competent authority with respect to the house is unintelligible and impracticable. A portion of the house has been* *forfeited. But the same has not been specified. The appellant was issued notice under Section 6(1) by treating the whole house as one unit. The competent authority has erred in bifurcating the unit for forfeiture purposes. The house is liable to be forfeited or not as one unit. The competent authority has wrongly directed the forfeiture of an unspecified portion of the house and the order is, therefore, defective."*

8. Per contra, Mr.AR.L.Sunderasan, Additional Solicitor General of India, would submit that Section 24 of the SAFEM (FoP) Act has an overriding effect, stating that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. He relied on Section 19 of the SAFEM (FoP) Act, which empowers the Competent Authority to take possession for forfeited property. This section states that where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under Sub Section (1) of Section 9 within the time allowed therefor under Sub

Section (3) of that Section, the competent authority may order the person affected, as well as any other person who may be in possession of the property, to surrender or deliver possession thereof to the competent authority. He would further submit that the order impugned clearly states that the petitioner purchased the property from Smt.Siddi Halima in 1999. Since the property transaction took place subsequent to the date of issue of notice under Section 6(1) i.e., 21.12.1977, the said transfer is null and void. Therefore, an order under Section 11 has been passed.

9. We have considered the submissions made on either side and perused the materials available on record.

10. The office of the Competent Authority issued proceedings under Section 11 and 19(1) of the SAFEM (FOP) Act, 1976 dated 31.07.2008, the copy of the order were addressed to the petitioner, Smt.Siddi Halima and to the District Collector, wherein it has been stated as follows :-

> (I) An order under Section 7(1) of the SAFEM (FOP) Act 1976 was passed on 12.07.1995 forfeiting the properties of Smt.Siddhi Halima w/o.Shri.S.Ahamed

Yaseen, pursuant to the notice under Section 6(1) issued on 21.12.1977.

(ii) It has come to my notice that during 1999, Smt.Siddhi Halima had sold her 50% share in right, title and interest in the property at Door No.128A Dr.Natesan Road, Chennai – 600 005 to Smt.Umaraobai w/o.Shri.L.Amarchand residing at No.134, 3rd Floor, Dr.Natesan Road, Chennai – 600 005. This alienation of property is in contravention of the provisions of Section 11 of the SAFEM (FOP) Act, 1976.

(iii) In the light of the legal position as discussed above, I hereby hold that all the transactions in respect of 50% share in right, title and interest in the property at Door No.128A, Dr.Natesan Road, Chennai – 600 005, after the date of issue of notice u/s.6(1) of the Smugglers and Foreign Exchange Manipulators (forfeiture of property) Act, 1976 i.e., 21.12.1977 are null and void and such holders have no right over the property referred to above as mandated by Section 11.

(iv) As a result, I hereby direct the present holders of the property to hand over possession of the property within 30 days of service of this order to the District Collector, Chennai who has been authorised by me to take over possession of the forfeited property.

11. The intimation regarding forfeiture proceedings dated 31.07.2008 addressed to the petitioner states as follows :-

(i) The following property belonging to Smt.Siddhi Halima, Kilakarai, Ramnad has been forfeited by the Central Government under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 SAFEM(FOP) A on 12.07.1995 “50% share in right, title and interest in the property at Door No.128A, Dr.Natesan Road, Chennai 600 005”.

(ii) Your attention is invited to the following facts :- In this case, a notice under Section 6(1) of Smugglers and Foreign Exchange Manipulators (forfeiture of property) Act, 1976 issued on 21.12.1977 and an order of forfeiture under Section 7(1) of the Act was passed on 12.07.1995. The above property belonging to Smt.Siddhi Halima had been forfeited to the Central Government under the Smugglers and Foreign Exchange Manipulators (forfeiture of property) Act (SAFEM(FOP)A) on 12.07.1995 by this order.

(iii) On verification it is noticed that you have purchased the above property from Smt.Siddi Halima in 1999. As the property transaction has taken place subsequent to the date of issue of notice under Section 6(1) i.e., 21.12.1977, the said transaction is null and void. An order of even date under Section 11 has also been passed today.

(iv) By virtue of provisions of Section 11 of SAFEMA, Smt.Siddi Halima had no title in this property to convey to you subsequent to 21.12.1977. Hence, the property had been purchased by you without any valid title. In fact, it belonged to the Central Government. You are in possession of the Government property.

(v) You are therefore, requested to hand over possession of the above property to the District Collector, Chennai within 30 days of service of this letter.

12. At this juncture, it is relevant to refer Sections 4, 9, 11 and 19(1)&(2) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 :-

> "***4. Prohibition of holding illegally acquired property***.—*(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.*
>
> *(2) Where any person holds any illegally*

acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act.

***9. Fine in lieu of forfeiture**.—(1) Where the competent authority makes a declaration that any property stands forfeited to the Central Government under section 7 and it is a case where the source of only a part, being less than one-half, of the income, earnings or assets with which such property was acquired has not been proved to the satisfaction of the competent authority, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one-fifth times the value of such part.*

Explanation.—For the purposes of this sub-section, the value of any part of income, earnings or assets, with which any property has been acquired, shall be,—

(a) in the case of any part of income or earnings, the amount of such part of income or earnings;

(b) in the case of any part of assets, the proportionate part of the full value of the consideration for the acquisition of such assets.

(2) Before making an order imposing a fine under sub-section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under sub-section (1), within such time as may be allowed in that behalf, the competent authority may, by order, revoke the declaration of forfeiture under section 7 and thereupon such property shall stand released.

***11. Certain transfers to be null and void**.— Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever* *such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.*

19. Power to take possession*.—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of section 9 within the time allowed there for under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.*

(2) If any person refuses or fails to comply with an order made under sub-section (1), the

competent authority may take possession of the property and may for that purpose use such force as may be necessary."

13. It is evident from the records that an order under Section 7(1) of the SAFEM (FoP) Act was passed on 12.07.1995 forfeiting the properties of Smt.Siddhi Halima w/o.S.Ahamed Yaseen pursuant to a notice under Section 6(1) issued on 21.12.1977. On 20.04.1999, a deed of sale was executed by two ladies viz., U.O.Sabeya Beevi w/o.Ibrahim and U.O.Sithik Alima Beevi w/.o.S.A.Yaseen along with four others were represented by power agent YS.Buhari, the sale was in favour of the petitioner Umrao Bhai. Hence, the 50% of the property came to be owned by U.O.Sabeya Beevi and 50% of the property by U.O.Sithik Alima Beevi. The property described in the sale deed is the third Floor of the building, Door No.134, Natesan Road, Triplicane, Chennai with a 1/4th undivided share in the land. The petitioner had purchased third floor with undivided share in the land along with building which consists of ground and three floors.

14. Further, it is observed that U.O.Sithik Alima's husband

S.A.Yaseen was detained under COFEPOSA, making his wife as the person affected. During 1999, Smt.Sithik Alima sold 50% share in the right, title, interest of the property at Door No.134, Dr.Natesan Road, Triplicane, Madras to Smt.Umrao Bhai wo/.L.Amarchand / writ petitioner herein.

15. As per section 11 of SAFEM (FoP) Act the alienation of any property under Section 11 of SAFEM (FoP) Act that after issuance of notice under Section 6 or under Section 10 is null and void, any transfer of such property any mode whatsoever, be ignored for the purposes of the proceedings under this Act. If such property is subsequently forfeited to the Central Government under Section 7, the transfer of such property shall be deemed to be null and void.

16. It is pertinent to mention that transfer of any property pending proceedings under Section 6 of the Act, is invalid as the Vendor has no valid title to execute the sale deed. When such a sale takes place, it amounts to sale of Central Government property by a total stranger in favour of the purchaser. In the light of the above well established legal

position that Smt.Sithik Alima's sale of property in the year 1999, was without legal title. By operation of law, this property became the property of the Central Government as on 21.12.1977, the date of issuance of notice under Section 6(1).

17. Admittedly, the Competent authority did not make any declaration that the property stands forfeited to the Central Government under Section 7. Instead, this case where the source of only a part, being less than one half of the income, earnings or assets with which such property was acquired, has not been proved to the satisfaction of the competent authority. As per Section 9, in such cases, the Competent Authority shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to one and one fifth times the value of such part. The Competent Authority held that the property has been declared to be forfeited to the Central Government and the person affected was not given opportunity to pay fine due under Sub Section 1 of Section 9 of the Act. Thereafter, the Competent Authority passed an order directing the person affected / writ petitioner, who is in possession of the property to hand over the possession under Section 19 of the SAFEM (FoP) Act.

18. In the light of the of above discussions, there is no force in the submissions made by the learned Senior Counsel appearing on behalf of the petitioner. We are of the opinion that the petitioner shall not be given option under sub Section 1 of Section 9 of the Act and there is no merit involved in this writ petition and we are not inclined to quash the proceedings / intimation notice issued by the Competent Authority / first respondent.

19. In the result :-

(a) The writ petition stands dismissed.

(b) The writ petitioner is hereby directed to hand over the possession of the property to the District Collector, Chennai within a period of 30 days from the date of receipt of a copy of this order, as mentioned in the proceedings and intimation letter dated 31.07.2008 of the Competent Authority / first respondent.

(c) No costs.

(S.M.S., J.) **(M.J.R., J.)**

23.01.2025.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

Competent Authority
Smugglers and Foreign Exchange
Manipulators (Forfeiture of Property Act 1956)
G.N.Chetty Street
Chennai.

S.M.SUBRAMANIAM.J,

and

M.JOTHIRAMAN.J,

tsh

Pre-Delivery Order in

W.P.No.20478 of 2008

23.01.2025.