(2009) 08 KL CK 0067

In the High Court Of Kerala

Case No : O.P. No. 21021 of 1999

Aisha	APPELLANT
Vs	
Competent Authority, SAFEM (FOP)	RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 6(1), 7(1)

Citation : (2009) 4 KLT 503 : (2010) 5 RCR(Criminal) 47

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : P.K. Ibrahim, for the Appellant;

Judgement

C.N. Ramachandran Nair, J.—Inspite of repeated posting of the case, there is no appearance for Central Government. Therefore, I perused the orders under challenge, heard the petitioner and proceed to dispose of the O.P. on merits.

2. The petitioner is challenging Ext.P5 order issued by the Competent Authority u/s 7(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter called "the Act"). Petitioner''s husband Sri. V.M. Mammunhi had suffered detention under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. However, he died in 1986. Subsequent to his death, Competent Authority u/s 6(1) of the Act issued notice to the petitioner on 13.12.1988 directing the petitioner to show the source of income for purchase of 4.32 acres of land in Uppala Village for a consideration of Rs. 5,000/- under two documents dated 17.12.1974 (wrongly shown in Ext.P3 as 17.12.1984) of the Sub Registrar''s office, Kasargode. Petitioner replied stating that petitioner''s husband during lifetime was engaged in bona fide business as a fish vendor and out of the same he purchased the property which was valued at only Rs. 5,000/-. Eventhough Competent Authority called for hearing, nobody turned up and therefore, he proceeded to issue Ext.P5 order rejecting petitioner''s request and ordering forfeiture of the entire property

u/s 7(1) of the Act. Even though petitioner filed another representation for rectifying mistakes in the order, the same was turned down vide Ext.P9 by the Competent Authority. It is against Ext.P5 confirmed by Ext.P9 petitioner has approached this Court contending that proceedings u/s 7(1) is not tenable against the petitioner.

3. The records prove beyond doubt that besides detention under the provisions of the Foreign Exchange and Prevention of Smuggling Activities Act, there was no finding that the deceased husband of the petitioner did not have any other profession or source of income to purchase the property for Rs. 5,000/-. In the first place, valuation of the property declared in the document is also not disputed by the Competent Authority. In other words, apparent consideration is taken as actual value of the land. The consideration shown in the document for purchase of the land is only Rs. 5,000/- in December 1975. It is pertinent to note that during the lifetime of the person detained namely, petitioner''s husband, no proceedings were initiated under the provisions of the Act. In fact it is nearly after two years the provisions were initiated vide Ext.P3 dated 30.12.1988. Further, the impugned order is passed again after 10 years on 13.7.1999. In the first place, the Act came into force only in 1976, whereas the property involved in this case was purchased on 17.12.1974 (wrongly shown as 17.12.1984 in the notice). Even though the provisions of the Act authorises forfeiture of the property, I do not think the Act authorises proceedings against the property acquired prior to commencement in force of the Act. Besides this, proceedings were initiated 12 years after the commencement of the Act, though the property involved was purchased on 17.12.1974. Further, there is no explanation for the inordinate delay in passing the adjudication order on 13.7.1999.1 do not think the petitioner who is not seriously educated will be in a position to defend the case in 1998 i.e. to prove the source of income of her late husband for the purchase of property he made on 19.12.1974. The apparent consideration of the property shown in the document is only Rs. 5,000/-. The respondent has no case that there is under valuation of the property and that the deceased has no other engagement or profession except the nefarious activities he was stated to be involved i.e. smuggling and dealing in foreign exchange. In the circumstances, I am of the view that Ext.P5 cannot be sustained based on the reasoning therein. Considering the inordinate delay in initiating the proceedings and since the property involved was purchased prior to the commencement of the Act and since the person who purchased the property died prior to initiation of proceedings under the Act, I allow the O.P. quashing Exts.P5 and P9 orders issued by the Competent Authority. However, I make it clear that this judgment does not affect proceedings for recovery of income tax or other proceedings pending against the deceased assessee.