(2018) 07 DEL CK 0046

In the Delhi High Court

Case No : Writ Petition(C) 4906 Of 2018 And Ia No. 18873 Of 2018

Competent Authority And Administrator APPELLANT

Vs

Navita Aggarwal RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 7(1), 7(3), 11, 12, 15
Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)
Customs Act, 1962 — Section 108, 110

Citation : (2018) 07 DEL CK 0046

Hon'ble Judges : VIBHU BAKHRU, J

Bench : Single Bench

Final Decision : Diposed Of

Judgement

VIBHU BAKHRU, J

1. The petitioner ? Competent Authority, Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereafter referred to as

â??the Competent Authorityâ?) ? has filed the present petition under Article 226 and 227 of the Constitution of India impugning an order dated

14.07.2017 (hereafter â??the impugned orderâ?) passed by the Appellate Tribunal (hereafter â??the Tribunalâ?) constituted under Section 12 of the

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereafter â??the Actâ?). By the impugned order, the Tribunal has

allowed the respondentâ?s appeal against an order dated 14.03.2017 passed by the Competent Authority under Section 7(1) and 7(3) of the Act, inter

alia, forfeiting all rights, title and interest in the house property bearing no.A3/88, Paschim Vihar, New Delhi (hereafter â??the said propertyâ??). Â

2. Mr Arun Bhardwaj, learned counsel appearing for the petitioner referred to the said order dated 14.03.2017 and submitted that the Competent

Authority had found that the respondent had been unable to substantiate the source of funds used for purchasing the said property and, therefore, the

Competent Authority had forfeited the said property. He submitted that the impugned order, which had the effect of releasing the said property from

forfeiture, was palpably erroneous. Â

3. The Competent Authority had sought to forfeit the said property as the benami property belonging to one Sh. Mahesh Chauhan alias Bunty son of

Sh. Inderjeet Singh Chauhan. It is stated that on 09.01.1996, the Lt. Governor, NCT of Delhi had passed an order of detention against Sh. Mahesh

Chauhan @ Bunty, under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

(hereafter â??COFEPOSAâ?). The allegation against Sh. Mahesh Chauhan was that he was engaged in smuggling gold to India. It is stated that on

28.08.1995, one Sh. Harpal Singh was intercepted by the custom officials on his arrival from Dubai and thirty-five gold biscuits of foreign markings

were recovered from Sh. Harpal Singh and the contraband was seized by the custom authorities under Section 110 of the Customs Act, 1962. It is

stated that Sh. Harpal Singh was smuggling gold for Sh. Mahesh Chauhan, who was waiting at the airport at the material time to receive the

contraband from Sh. Harpal Singh. He was also apprehended. It is claimed that Sh. Mahesh Chauhan made a voluntary statement under Section 108

of the Customs Act, 1962 admitting that he had entered into an arrangement with his cousin to smuggle the gold into the country from Dubai. He

admitted that Sh. Harpal Singh had agreed to smuggle the goods for them and all expenses towards his travel to Dubai and back been paid by Sh.

Mahesh Chauhan. The residential address of Sh. Mahesh Chauhan was reflected as A-3/88, Paschim Vihar, New Delhi (the said property).

4. On 18.01.2002, the Competent Authority issued a show cause notice under Section 6(1) of the Act and called upon Sh. Mahesh Chauhan to explain

why the properties as set out in schedule to the notice (which also included the said property) be not forfeited for being illegally acquired properties.

The said notice was issued after the Competent Authority had recorded its reasons for such action, on 17.02.2002.Â

5. In his response dated 27.01.2003, Sh. Mahesh Chauhan, inter alia, stated as under:-

â??It is submitted that this property is rented premises and I was simply a tenant in this property which I have already left.â??

6. The undisputed fact is that the said property was originally allotted to one Sh. Kishan S/o Sh. Giani Ram, R/o 2630, Shadipur, Delhi in the year 1974.

A perpetual lease deed dated 12.03.1974 was also executed by the Land and Housing Department, Delhi Administration in favour of Sh. Kishan.

After the demise of Sh. Kishan, the said property devolved on his two sons, namely, Sh. Prem Chand and Sh. Rajender Prashad. The said property

was converted from lease hold to free hold and a conveyance deed was executed by DDA in favour of Sh. Prem Chand and Sh. Rajender Prashad,

which was duly registered on 10.09.1998.

7. Thereafter, Sh. Prem Chand (one of the sons of Sh. Kishan) relinquished his share in the said property in favour of his brother Sh. Rajender

Prashad by executing a relinquishment deed dated 16.11.2000. With the execution of the said release deed, Sh. Rajender Prashad became the

absolute owner of the said property. Â

8. The respondent purchased the said property from Sh Rajender Prashad in the year 2003 by a registered sale deed dated 11.07.2003. The

respondent approached Sub-Registrar - II, West District, Janakpuri, New Delhi for collecting the Sale Deed on 12.08.2003 and at that stage she was

informed that the Sale Deed could not be provided to hear in view of the notice issued by the Competent Authority under Section 6(1) of the Act. Â

9. The respondent claimed that on certain queries, it was found that the erstwhile owner of the said property, namely, Sh. Rajender Prashad had

entered into a rent agreement dated 04.05.1995 with Smt Sudesh Chauhan w/o Inderjeet Singh Chauhan. It was stated that she had vacated the said

property in January 1996; that is much prior to its sale in favour of the respondent. The respondent also produced a copy of the rent agreement. It was

contended that since Smt. Sudesh Chauhan (the tenant) was the mother of Sh. Mahesh Chauhan, he may have been briefly residing in the said

property or may have reflected the said property as his residence. However, Smt. Sudesh Chauhan had vacated the said premises in 1996, that is,

more than eight years prior to the respondent purchasing the said property. Â

10. The respondent submitted the aforesaid explanation to the Competent Authority by a letter dated 28.08.2003. Thereafter, on 12.02.2004, the

Competent Authority issued a communication to the Deputy Commissioner (West), which is set out below:-

â??To

The Deputy Commissioner (West),

Old School Complex,

Rampura

DELHI

Sir,

Sub: Proceedings under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEM(FOP) Act, 1976 in respect of

Shri Mahesh Chauhan Bunty S/o. Shri Inderjeet Singh Chauhan, R/oA3/88, Paschim Vihar, New Delhi.

Kindly refer to this office letter F.No.C.A/DL/130/2001/Vol.II/1565 dated 04.02.2002 on the subject mentioned above.

2. The restrain order issued within the meaning of section 11 of the SEFEM(FOP) Act, 1976 with respect to right, title and interest in house property

situated at A-3/88, Paschim Vihar, New Delhi is hereby lifted. You are requested to please make necessary entries in your records.

Yours faithfully

S/dÂ Â (ARCHANA RANJAN) COMPETENT AUTHORITYâ?? Â

11. The petitioner took no action with regard to the said property for a period of almost twelve years thereafter. Thereafter, on 26.02.2016, the

petitioner issued summons under Section 15 of the Act addressed to the respondent, the two sons of Late Sh. Kishan (Sh. Rajender Prashad and Sh.

Prem Chand) and Smt. Sudesh Chauhan stating that proceedings under Section 6(1) of the Act against Sh Mahesh Chauhan were continuing before

the Competent Authority and it had come to the notice of the Competent Authority that the addressees were in possession of the said property. The

said addressees were directed to appear before the Competent Authority on 07.03.2016 to clarify their position and to produce the relevant records.

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12. The respondent once again furnished the explanation (which she had

tendered earlier) by filing replies dated 18.03.2016 and 19.08.2016. The

respondent explained that she had purchased the said property for a consideration of ☐ 5,10,000/- and the said consideration was paid from the amount

of ☐ 8,76,000/- received from the sale of property bearing No. A-252, Meera Bagh, Paschim Vihar, New Delhi. She also produced the passbook of the

bank account maintained with Allahabad Bank, which reflected the amounts of ☐ 1,75,000/- on 09.04.2003; ☐ 2,25,000/- on 22.04.2003; and ☐ 4,51,000/-

on 02.08.2003. The respondent also stated that she had taken short term loan of ☐ 4,00,000/- (vide cheque no. 710531) on 11.07.2003 from her younger

brother (Mr Sudhir Agarwal) and the same had been repaid on 05.08.2003. Â

13. Although the respondent had provided the necessary explanation, the Competent Authority rejected the explanation and held that the respondent

had failed to prove the sums of ☐ 5,10,000/- paid by her towards acquisition of the said property. Â

14. The Competent Authority noticed that the respondent had only submitted a photocopy of the Sale Deed relating to the only one floor of the

property bearing No. A-252, Meera Bagh, Paschim Vihar, New Delhi. The Competent Authority also noted that a sum of ☐ 4,50,000/- had been

received for the sale of the said property by pay orders no. 003181 and 003182 dated 21.04.2003 which had been credited to the account of the

respondent and Sh. Sanjay Aggarwal. However, the Competent Authority held that the respondent â??has not explained source of remaining balance

of Rs.6,01,000/-â?. Although it was not disputed that a sum of ☐ 4,00,000/- was received by the respondent from Mr Sudhir Aggarwal on 11.07.2003

by cheque no. 710531, the Competent Authority did not accept the same as credible evidence for the reason that (i) the credit worthiness of Sh.

Sudhir Agarwal had not been proved, and (ii) no documents had been produced to evidence the loan transaction. Â

15. The respondent also pointed out that she had furnished her explanation as early as in the year 2003, which was accepted as restrain order had

been lifted by a communication dated 12.02.2004. This contention was also rejected by the Competent Authority by stating that the letter dated

12.02.2004 was not an order but only a communication to the Deputy Commissioner(West). Â

16. Aggrieved by the aforesaid order dated 14.03.2017 forfeiting the said property, the respondent preferred an appeal before the Tribunal. Â

17. The Tribunal noted the relevant facts and held that the respondent had sufficiently explained the source of funds for the purchase of the said

property. Further, the Tribunal also held that no link could be established by the petitioner between Sh. Mahesh Chauhan and the respondent. It

observed that merely staying on rent for a brief period in the house of the vendor cannot be stretched to the extent of concluding that either the

respondent or the vendor was an associate of the Affected Person (Sh. Mahesh Chauhan). The Tribunal also noticed the communication dated

12.02.2004 and observed as under:-

â??From the combined reading of contents of letter dated 12.2.2004 & provision of section 11 of the said Act it is clear that the restraint order issued

earlier under this aforesaid provisions of section 11 by the Competent Authority was lifted on 12.02.2004 so far as the schedule property is concerned.

It means on being lifting of restraint order, the Competent Authority has lifted the order referred above of the transfer with respect to right, title and

interest in the said property in the name of the appellant and once that is so, it is not proper on the part of the Competent Authority now to pass

another order subsequently giving finding that the schedule property has been acquired through fund illegally earned.â??

18. This Court finds no infirmity with the decision of the Tribunal. It is apparent from the facts as narrated above that the order dated 14.03.2017

passed by the petitioner was wholly unsustainable. It is apparent that the petitioner had approached the issue with pre-determined mind. There was no

material whatsoever which linked Sh. Mahesh Chauhan with the respondent or could have possibly led the Competent Authority to even remotely

entertain a suspicion that the respondent and Sh. Rajender Prashad held the property as benamidars of Sh. Mahesh Chauhan. As notice above, the

said property was allotted to Sh. Kishan way back in 1974, that is, much prior to any allegation or proceedings against Sh. Mahesh Chauhan (who was

arrested in 1995). Â

19. The said property continued to remain in the ownership of Sh. Kishan and/or his legal heirs (Sh. Prem Chand and Sh. Rajender Prashad) till Sh.

Prem Chand relinquished his share in favour of his brother Sh. Rajender Prashad by the release deed dated 16.11.2000. Sh. Rajender Prashad

continued to be the owner of the said property till it was sold to the respondent by a registered deed dated 27.07.2003. Sh. Mahesh Chauhan had been

arrested eight years earlier and his movable properties were not in his control. There is no material to even remotely indicate to suggest that Sh.

Mahesh Chauhan had funded the purchase of the said property by the respondent. Â

20. The respondent had produced the pass book of the bank account and the Competent Authority had also reconciled the entry of `2,25,000/- with the

Sale Deed of one of the floors of the property sold by the respondent (her family). The Tribunal held â?" and in view of this Court, rightly so â?" that

the respondent had sufficiently explained the source of the funds for purchase of the said property.

21. This Court is also at a loss to understand as to what has prompted the Competent Authority to re-open the matter after twelve years. As noticed

above, the show cause notice under Section 6(1) of the Act was issued way back on 18.01.2002. The respondent had thereafter submitted all

explanations, which this Court has no doubt, were considered by the Competent Authority at the material time. The Competent Authority had,

thereafter, decided to lift the restrain order under Section 11 of the Act as is apparent from the plain language of the communication dated 12.02.2004.

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22. As stated above, the reason for the Competent Authority to once again seek explanation in respect of the said property after more than twelve

years are not clear. However, it is apparent that the same has resulted is unnecessary harassment to the respondent. The Tribunal had examined the

matter; however, the Competent Authority did not rest content with such examination. Even though it has no evidence or material whatsoever to

assume that the said property belonged to Shr Mahesh Chauhan or that the respondent and Sh Mahesh Chauhan were connected in any manner, the

Competent Authority has preferred the present petition.

23. In view of the above, the present petition is liable to be dismissed. The pending application is also disposed of. This Court is also of the view that

the Competent Authority must be mulcted with costs for unjustifiably imposing on the judicial time of this Court. The present petition is, thus, dismissed with costs quantified at □ ,50,000/-. The cost shall be deposited with the Delhi High Court Legal Services Committee within a period of four weeks

from today.

