

(2014) 08 GUJ CK 0013

In the Gujarat High Court

Case No : Special Civil Application No. 11541 of 2013

Deepakbhai Ambalal Suthar

APPELLANT

Vs

Appellate Tribunal for Forfeited Properties

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Constitution of India, 1950 — Article 21
Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 10, 11, 12(4), 19, 3(1)

Citation : (2014) 08 GUJ CK 0013

Hon'ble Judges : S.G. Shah, J

Bench : Single Bench

Advocate : S.K. Patel, Advocate for the Appellant; K.T. Dave, Advocate for the Respondent

Judgement

@

S.G. Shah, J.—The petitioner has challenged the order dated 20.03.2013 passed by the Appellate Tribunal for Forfeited Property, New Delhi, in MP-20/BOM/2011 (Condonation of Delay) and prayed to quash and set aside the order dated 01.08.2008 passed by the Competent Authority, SAFEMA, Mumbai, whereby, residential house of the petitioner situated at House No. 53-B, Bansidhar Park Society, Naroda, Ahmedabad, is ordered to be forfeited. The petitioner has also prayed to quash and set aside the order of sealing of said house and all other consequent orders. Pursuant to the above referred orders and the property, the petitioner has also prayed to stay operation, implementation and execution of the above impugned orders during the pendency of this petition. However, Considering the issue regarding forfeiture of the property and concurrent findings of the two authorities, while hearing the matter for admission, both the sides have agreed to decide it finally so as to save repeated arguments initially for admission and for final hearing. Therefore, both the sides are heard for final hearing of the matter. Hence, Rule. Mr. K.T. Dave, learned counsel waives service of Rule.

2. The sum and substance of the petition is to the effect that there is no delay in filing of appeal, and if at all, there is any delay, it is only in re-filing the appeal as per prescribed format. Therefore, it cannot be said that there is any delay in filing the main appeal, thereby, the order of rejection of appeal on the ground of delay is improper and illegal. It is submitted that in fact, appeal is filed in time, but because of the office objections, appeal was not numbered and only office objections were with reference to not filing the appeal in prescribed format, and ultimately, whatsoever delay considered for dismissing the appeal is only for removal of such office objections by filing a fresh memo of appeal in prescribed format. It is, therefore, submitted that the Tribunal has erred in not considering the technical delay for removal of office objections, as delay in filing the appeal, though there was no delay in filing the appeal. It is also submitted that in fact, there is gross delay by the Tribunal itself in not deciding the appeal from the year 2009 till the year 2013 at every stage, and even not delivering the impugned orders after final hearing, and as against the delay of 45 days after removal of office objections, therefore, the delay could have been condoned. It is further submitted that the provisions of Limitation Act are not expressly excluded the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, "SAFEMA"), and, therefore, the Tribunal could have condoned the delay.

3. Even though no such ground was agitated before the Tribunal and though such ground was agitated in the petition to declare the provisions of the Act as vires, the petitioner has contended that the prescribed period of limitation being 45 days is grossly inadequate since the Tribunal has jurisdiction over the entire Nation and people has to come from far distant places and, thereby, the original limitation of 45 days is not sufficient. It is also contended that after filing of appeal in prescribed format, the Tribunal had taken 190 days in informing the petitioner regarding office objections, and, thereby, to re-send the appeal in prescribed format. Therefore, it is contended that while considering the total days of delay such 190 days cannot be counted as delay on the part of the petitioner. It is further submitted that the Tribunal has erred in treating the date of re-filing of appeal in prescribed format as the date of filing of appeal, which is contrary to the record and rules, because the date of re-filing of appeal in prescribed format, is not the actual date of filing of the appeal, but it is merely a date of removal of office objections, whereas, the date of filing of appeal is certainly within the period of limitation. It is, therefore, contended that the time for removal of office objections cannot be considered as time for filing of main matter, and when the petitioner has filed the appeal within the prescribed period of limitation, it was the Tribunal's decision to ask the same in prescribed format, and, therefore, the petitioner has sent the appeal in prescribed format only after such decision is taken by the Tribunal. Thus, it cannot be construed as new filing, but it is removal for office objections and nothing else, and, therefore, the date of re-filing of appeal in prescribed format cannot be considered as the actual date of filing of appeal. It is also contended that otherwise the petitioner has good

case on merit, and that the impugned order was passed without extending an opportunity to the petitioner and ex-party order of the competent authority forfeiting the property of the petitioner is in violation of the principles of nature justice.

4. So far as the merit is concerned, it is contended that in fact, the petitioner has purchased the property from one Dadubhai Barot, who is the father of the person against whom actions are initiated under the Act, and thereby, when the petitioner is not culprit or tax evader, there is no reason to forfeit the property of the petitioner, and, therefore, the competent authority should have dropped the forfeiture proceedings initiated against said Dadubhai Barot, as it was done in his another house No. 54 of the same society. Upon perusal of a common order dated 02.03.2011, a copy of which is produced at Annexure-"G" to the petition, it becomes clear that the competent authority has, after considering the submissions before it, lifted all the prohibitions and restrictions imposed on the property being house No. 54 of Bansidhar Park Society, Naroda, Ahmedabad against said Dadubhai Bhurabhai Barot. While lifting the said prohibitions and restrictions, the competent authority has considered the source of earnings and income of said Dadubhai Barot, and upon replying on the decision in case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, , the competent authority has considered that only properties of the convict/detenu are sought to be forfeited wherever they are. The idea is to reach his property in whosever's name they are kept or whatsoever they had held, but the independent properties of relatives and friends which are sought to be forfeited, are not within the purview of SAFEMA.

5. Thus, it is contended that pursuant to the said order dated 02.03.2011, the competent authority had already come to the conclusion that the property purchased from Dadubhai Bhurabhai Barot has no link or nexus with illegal income earned by Hemant Dadubhai Barot, son of Dadubhai Bhurabhai Barot. Therefore, it is contended that when the proceedings against Dadubhai Barot have been dropped vide said order dated 02.03.2011, proceeding against the present petitioner who has purchased the property from said Dadubhai Barot is not sustainable in the eye of law, and therefore, property in question cannot be forfeited under the provisions of SAFEMA since the petitioner is neither the convict nor the detenu and does not have any direct link or nexus either with the convict or detenu Hemant Dadubhai Barot or with Dadubhai Bhurabhai Barot from whom the properties are purchased. It is further contended that Dadubhai Barot has a common source of income and when all the properties have been purchased from the same source of income and the order of forfeiting one property has been dropped, then the order to forfeit other property of the same person cannot be sustained since he is a common owner of both the properties. It is further submitted that there is no dispute about factual details that house No. 54 has not been transferred by Dadubhai Barot in the name of any third person which could have been transferred, even though house No. 53-B is transferred only with a view to avoid forfeiture as alleged, then Dadubhai Barot

would transfer the house Nos. 53-B and 54. Therefore, when proceedings of forfeiture of house No. 54 are dropped, the competent authority is unnecessarily harassing the petitioner. It is further contended that the petitioner was not aware about the proceedings under SAFEMA against such property or against said person, and it has been purchased bonafidely by paying full consideration without notice of proceedings under SAFEMA, and though such bonafide was proved before the competent authority by producing all relevant documents, the competent authority has failed to consider source of income of the petitioner and bonafide sale transactions between Dadubhai Barot and the petitioner. It is further contended that the petitioner and his family members are without any shelter and they are facing lot of difficulty because of the seal applied on the house of the petitioner pending appeal before the Tribunal, which is in gross violation of principles of nature justice and the provisions of Article 21 of the Constitution of India since it is without any basis and any reason.

6. As against that, the respondents have resisted the petition by filing an affidavit-in-reply contending that one Hemant Dadubhai Barot was ordered to be detained vide order dated 03.02.1997 issued under the provisions of Conservation of Foreign Exchange And Prevention of Smuggling Activities Act, 1974 (for short, "COFEPOSA"), and the said order of detention was neither revoked nor set aside by the competent Court, and, therefore, he was covered as a person under the provisions of SAFEMA. Thereupon, a notice under Section 6 of SAFEMA was issued on 13.07.1999 to said Hemant Dadubhai Barot and his father Dadubhai Bhurabhai Barot calling them to explain their source of earnings and income, investment in the properties mentioned in the show cause notice and to show cause as to why such properties should not be declared as illegally acquired properties and forfeited to Central Government free from all encumbrances. It is not in dispute that house Nos. 53B and 54 are the subject matter of said proceedings amongst which house No. 53B, in turn, purchased by the present petitioner. It is further contended by the respondents that Dadubhai Barot has filed appeal before the appellate Tribunal, but did not press for the property in question i.e. house No. 53-B, and disputed only about another property, and, therefore, the appellate Tribunal has confirmed the order dated 01.08.2008 forfeiting the above property by its order dated 20.01.2010. Therefore, it is contended that since the order of forfeiture was confirmed in respect of the property in question, a notice under Section 19 of SAFEMA was issued on 19.04.2011 and possession of the property was taken on 15.12.2011.

7. So far as the appeal of the present petitioner is concerned, it is admitted that the appeal has been filed before the appellate Tribunal on 22.09.2008, which was within 45 days from the date of the order of forfeiture of property being 01.08.2008. However, the appeal was treated as defective and the same was returned back to the petitioner by the Tribunal vide its letter dated 03.03.2009 i.e. at least after six months with a direction to file the same in prescribed format, and, thereafter, the petitioner has filed the appeal in prescribed format only on 02.06.2009 i.e. within 90 days, which was registered as F.P.A. No. 15/

BOM/2009. Therefore, the appellate Tribunal has vide its judgment and order dated 20.03.2013 dismissed the appeal both on merits as well as limitation.

8. It is further contended that transactions in respect of the property in question will be deemed as null and void pursuant to the provisions under Section 11 of the SAFEMA. According to which, any property referred to in the notice under Section 6 or 10 is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under the 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. It is further contended that similar issue has been considered by the Honourable Supreme Court in the case of Winston Tan and Another Vs. Union of India (UOI) and Another, , wherein, after considering all the relevant provisions of the Act, vide judgment dated 04.10.2012, the Honourable Supreme Court has held that any transfer of property, after issuance of notice under Section 6(1) of SAFEMA, was meaningless if the said property was later on forfeited under Section 7 of SAFEMA. Paragraphs 22 to 29 of the said judgment of the Honourable Supreme Court have been reproduced by the deponent in his affidavit-in-reply. Therefore, it is submitted that when it is an admitted position that the petitioner has purchased the property in the year 2007, whereas show cause notice under Section 6(1) was issued in the year 1999, the appellant has no case on merit.

9. So far as limitation is concerned, it is contended that the Division Bench of Delhi High Court in its judgment dated 27.09.2012 passed in Letters Patent Appeal Nos. 656 of 2011 and 657 of 2011 held that under SAFEMA Act, the limitation cannot be condoned beyond the period of 60 days. In para 8 of the said judgment dated 27.09.2012, the Delhi High Court has held as under:

... It is clear that an appeal under Section 12(4) of SAFEMA has to be filed within 45 days from the date on which the order is served on the person aggrieved. The proviso extends that period by enabling the Tribunal to entertain an appeal even after the period of 45 days but restricts it to the period of 60 days. The stipulation is clear and categorical that the Tribunal cannot entertain any appeal after 60 days from the date on which the order is served on the aggrieved person. The question of the appellant being prevented by a sufficient cause in not filing the appeal within the initial period of 45 days can be looked into only for the balance period of 15 days after 45 days, that is up to the 60th day.

10. The respondents are also relying upon the observations in para 10 of the appellate Tribunal's order dated 20.03.2013, impugned in this petition, which reads as under:

Even if the limitation for the sake of argument is computed from 3rd March, 2009 when the appeal which was not in proper format had been returned to the appellant, the appeal should have been re-filed within forty five days from that date and within fifteen days thereafter showing good and sufficient cause as contemplated under law and in the facts and circumstances of the case, and in

that case delay of only 15 days could be condoned. The appeal admittedly has not been filed even within sixty days from 3rd March, 2009 when it was received back by the appellant from the Tribunal, as the appeal was re-filed on 2nd June 2009, which is almost after ninety days.

11. Therefore, it is submitted that even for the sake of arguments, if submissions of the petitioner are accepted, the delay is counted from the date of re-filing of appeal and not from the date of actual filing of the appeal, in that case also, considering the provisions of the Act, when the Tribunal is not empowered to condone the delay beyond 60 days, the appeal filed after 60 days is certainly beyond the period of limitation, and the Tribunal does not have the powers to condone such delay, and therefore, the impugned order is not violative in any manner.

12. It is further submitted during the arguments that if at all the petitioner is a bonafide purchaser for the property, he should have filed appeal with seller Dadubhai Barot who preferred the appeal well in advance, for house No. 54 only, wherein, benefit was given to Dadubhai Barot by order dated 07.03.2011. Otherwise, when the petitioner has failed to agitate the issue in time and if Dadubhai Barot has also a bonafide claim, they had to plead and prove, thereby removal of restrictions from the property in question practically by Hemant Dadubhai Barot, the detenu, and his father Dadubhai Barot, and the present petitioner at the relevant time.

13. It is further submitted that parties were given appropriate opportunities to submit their case and when they have failed to prove that the property in question is bonafidely purchased by the petitioner, the fact remains that there is no reason to quash and set aside the said impugned order.

14. Upon considering the rival submissions so far as the delay is concerned, though there is a technical delay, the appeal is filed in prescribed period of limitation, but it cannot be filed in prescribed format. Considering the liberal view taken by all the Courts so far as such limitation is concerned, though the petitioner may get the same benefit, the fact remains that even after receiving the intimation that the appeal is to be filed in prescribed format, the petitioner has filed the appeal after at least 90 days which is beyond the period of limitation which can be taken care by the Tribunal and therefore, it cannot be said that the impugned decision of the Appellate Tribunal is not proper on that count. The law does not permit the Tribunal to condone the delay beyond 15 days, whereas in this case, delay is of 15 days even if all benefits are extended to the petitioner.

15. I have gone through the impugned order dated 01.08.2008. It is evident from the record that since no evidence is placed on record about the sale and the date of sale of the property i.e., House No. 53-B, Bansidhar Park Society nor the aforesaid purchaser has responded to the notice issued by this office, so, it is held that said property is still owned by AP-1-Hemant Dadubhai Barot or AP-2-Dadubhai Barot sold it subsequent to issuance of show cause notice. AP-2 has

failed to place on record any evidence whatsoever to show the legal sources of income out of which aforesaid two properties i.e., house No. 53-B and 54 in the aforesaid society were purchased by him, so, these properties are held to be illegally acquired properties hence liable for forfeiture under the provisions of SAFEMA.

16. The fact remains that initially, forfeiture order in respect of certain properties was passed against one Hemant Dadubhai Barot, who was ordered to be detained under Section 3(1) of COFEPOSA and his father Dadubhai Barot was also served with a show cause notice under Section 6 of SAFEMA on 18.09.1997. During the course of taking over the physical possession of the properties on 31.03.1998, certain other properties of Dadubhai Barot was found, which were otherwise not included in earlier proceedings, and therefore, another notice under Section 6 of the Act was also issued on 13.07.1999, which includes the property being House No. 53-B, Bansidhar Park Society, Naroda, Ahmedabad. However, when Inspecting Officer, in his report dated 19.04.2006, disclosed that the property in question was sold to the petitioner, the show cause notice issued to the petitioner on 05.09.2009. That all such facts can be gathered from the order dated 01.08.2008 passed by the competent authority while releasing the restrictions from one of the properties being Maruti Esteem Car and confirmed forfeiture of the property being House No. 53, 53-B, and 54 of Bansidhar Park Society, Naroda, Ahmedabad and Armada Jeep, Registered No. GJ-1-HH-565 in the name of Dadubhai Barot. Therefore, it is clear and certain that there was show cause notice to forfeit the property since the year 1999 and, therefore, Dadubhai Bhurabhai Barot has not disclosed the pendency of such proceedings to the present petitioner in the alleged sale deed executed on 28.04.2007. It is also certain and clear that such sale deed is not a registered document, but it was simply notarized, and, therefore, as observed by the Appellate Tribunal in its order, relying upon the judgment of the Delhi High Court that it becomes clear that the petitioner has no good case both on merits and on the question of limitation, inasmuch as the appeal has been preferred after the period of 60 days, even after getting intimation for filing the appeal in prescribed format, and the sale transactions of 2007 is certainly after service of show cause notice on Hemant Dadubhai Barot and Dadubhai Bhurabhai Barot. Therefore, even if the period of limitation cannot be counted from the date of actual filing of the appeal, but after re-filing of appeal, then also it is for the period of 60 days and, thereby, even if total delay may be treated only for 45 days. When the Tribunal has no jurisdiction to condone such delay and the impugned order cannot be quashed and set aside on such grounds.

17. Whereas, so far as merit of the case is concerned, as discussed herein above, the Appellate Tribunal has rightly observed that when the show cause notice was of the year 1997 and 1999 i.e. well in advance, and the sale transactions in the year 2007, the petitioner does not have any right over the forfeited properties even after he has purchased it by making full payment. In that case, the petitioner, if so advice, may initiate appropriate proceedings against the person

from whom he has purchased the property, which is otherwise under the forfeiture proceedings by the competent authority, as considering the provisions of the Act and the decision of the Hon''ble Supreme Court, sale transaction during the pendency of forfeiture proceedings becomes null and void.

18. In view of above facts and circumstances, there is no substance in the petition, and hence, the same is dismissed. Rule is discharged.