

(2016) 06 BOM CK 0156
In the Bombay High Court
Case No : Writ Petition (L) No. 1227 of 2016

Ghazala Shehroz Malik

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 27-06-2016

Acts Referred:

Citation : (2016) 339 ELT 575

Hon'ble Judges : S.C. Dharmadhikari and Dr. Shalini Phansalkar Joshi, JJ.

Bench : Division Bench

Advocate : S/Shri Prakash Shah with Anil Balani, C. Subba Reddy, Ms. C. Pooja Reddy i/b Dubey Vinit Prabhat, Advocate, for the Petitioners; S/Shri Pradeep S. Jetly with Jitendra B. Mishra, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. The Petitioner has approached this Court complaining about the wrongful attachment of her immovable property.

2. She is aggrieved by the contents of the communication dated 1-3-2016. This communication reads as under :

Sub. : Identification of properties allegedly acquired through smuggling of red sanders (Rakhi Chandan) by Shri Badshah Majid Malik reg.

This unit is investigating a case of organized smuggling of red sanders (Rakhi Chandan) by Shri Badshah Majid Malik and others, which is a natural resource covered under CITES (Convention on International Trade of Endangered Species of Wild flora and fauna) and export of red Sanders is prohibited under the EXIM policy.

2. During investigations it is learnt that the funds generated from the smuggling of red sanders has been utilized by Shri Badshah Majid Malik for purchase of immovable properties at various places in Maharashtra either in his name or in the names of his family members, benami.

3. (i) Such property has been identified in the name Shri Badshah Majid Malik at your premises as Residential premises on 10th Floor, Flat No. 16101, Building No. 16, Kohinoor City, Kirol Road, Off. L.B.S. Road, Kurla (West), Mumbai - 400 070.

(ii) Such property has been identified in the name Ghazala Shehroz Malik at your premises as Residential premises on 1st Floor, Flat No. 2112, Building No. 21, Kohinoor City, Kirol Road, Off. L.B.S. Road, Kurla (West), Mumbai - 400 070.

4. It is further requested that if any properties at your premises are in the name of Shri Badshah Majid Malik, Shri Shehroz Zakir Hussain Malik, Shri Saeed Zakir Hussain Malik or M/s. Empire India Multitude Pvt. Ltd. and M/s. Malik Real Land Developers Pvt. Ltd. the same may please be intimated to this office urgently.

5. The sale proceeds of smuggling of red sanders are liable for confiscation under section 121 of the Customs Act, 1962. It is, therefore, requested that the above said property should not be allowed to be sold/transferred/leased out in any manner without written NOC from this office.

3. It is common ground that on 21-3-2016 the communication was replied by none other than the addressee itself. Kohinoor Planet Constructions Pvt. Ltd. clarified that Ghazala Shehroz Malik, the petitioner before us, is the purchaser of Flat No. 2112, Kohinoor City "C" Cooperative Housing Society Ltd. which is registered now and the details of all the unit holders, including the petitioners and the records have been handed over to the society. The Chairman of the society was informed about this communication from the Revenue. Further reliance is also placed by Mr. Shah on the letter addressed by the petitioner herself on 7-4-2016 denying any kind of business relationship with Badshah Malik, the alleged kingpin in smuggling of red sanders. She states that there is no basis for the allegation that the funds, generated from the smuggling activities, have been utilized by Badshah Malik for purchase of immovable properties. This is reiterated by her in another letter dated 18-4-2016. In answer to such allegations, the Revenue filed an affidavit of the Deputy Director of DRI, who refers to the role of Badshah Majid Malik and states that the husband of the petitioner, together with Badshah, was instrumental in floating a company called Empire India Multitrade Pvt. Ltd. It is in these circumstances that when the kingpin and the husband of the petitioner were involved in the operation of two private limited companies that the communication was addressed to the petitioner and she was called upon to produce the original documents for scrutiny and perusal of the DRI.

4. After having perused the affidavit in reply in its entirety, we find that there is a clear dichotomy or contradiction therein. In one breath the reply of the respondent Revenue states that the premises have not been attached or seized, but at the same time they claim to be thoroughly investigating the matter in the light of past history of the petitioner's husband and his association with Badshah Malik. We are of the view that the original documents which are produced by the petitioner enable us to conclude that the Revenue could not have proceeded

against the petitioner and addressed the subject communication. Once the petitioner's role has not been pinpointed nor her association with the alleged kingpin, prima facie, also established, then such communication, innocuous as it may appear, has far reaching consequences and hence cannot be sustained. The department has not been able to satisfy even, prima facie, on the contents of the letter dated 1-3-2016.

5. In the circumstances the Writ Petition is allowed and the impugned communication is quashed and set aside. No costs.