(2011) 04 DEL CK 0194

In the Delhi High Court

Case No : Writ Petition (C) 53 of 2000 and CM No. 12314 of 2010 (for stay)

Mohinder Kaur APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 26-04-2011

Acts Referred:

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 3, 6(1), 7(1)

Citation : (2011) 180 DLT 149 : (2011) 124 DRJ 80

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Maneesha Dhir and Geeta Sharma, for the Appellant; Mohit Auluck, for Neeraj Chaudhari, CGSC for UOI, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner challenges an order dated 2nd November 1999 passed by the Appellate Tribunal for Forfeited Properties (hereinafter "the Tribunal") dismissing the Petitioner''s appeal against an order dated 4th February 1992 passed by the Competent Authority ("CA'') under Sections 7(1) and (3) of the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 ("SAFEMA'').

2. This Court has heard the submissions of Ms. Maneesha Dhir, learned Counsel for the Petitioner and Mr. Mohit Auluck, learned Advocate appearing for the Union of India.

3. The Petitioner who at present is over 83 years old was married to late Shri Sohan Singh of village Sur Singh in 1946. The Petitioner claims that in 1957 a residential plot measuring 719.8 sq. m. was purchased for a sum of Rs. 5,700/-. Further, her father Shri Chuhar Singh purchased a house in Rani-ka-Bagh locality in Amritsar for Rs. 25,000/- in her name and gifted it to her on 3rd March 1967. Agricultural land measuring 40 acres was purchased in 1957 and the appropriate consideration was paid in six installments between 2nd December 1957 and 11th

January 1960.

4. Shri Sohan Singh was first detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ("COFEPOSA") on 1st July 1976. It is stated that he was never supplied with the grounds for the detention. The second detention order was passed on 1st December 1976 and again no grounds for detention were furnished to him. Shri Sohan Singh was released with the lifting of the internal emergency on 22nd March 1977. This Court takes judicial notice of the fact that during the time when the internal emergency was in force the right of a detenu to file a writ petition in the High Court challenging an order of detention was suspended. During this entire period, no steps were taken to invoke the provisions of SAFEMA against Shri Sohan Singh.

5. A third detention order was passed against Shri Sohan Singh on 8th November 1978. In the said detention order it was alleged that after Shri Sohan Singh was released on 22nd March 1977 he had been involved in certain other illegal activities. It was alleged that on 27th February 1978 Shri Sohan Singh, along with others, was returning to India with 15 biscuits of gold when he was detained by the Border Security Force.

6. Shri Sohan Singh challenged the aforementioned detention order dated 8th November 1978 by filing a Criminal Writ Petition No. 51 of 1979 in the High Court of Punjab and Haryana. By an order dated 3rd May 1979 passed by that High Court the said detention order was quashed. Consequently, the third detention order dated 8th November 1978 and the grounds on the basis of which the said detention order was passed no longer survived to enable the CA under SAFEMA to take note of for the purposes of initiating proceedings under SAFEMA.

7. Nearly five years after the first two detention orders dated 1st July 1976 and 1st December 1976 were passed, a notice was issued to the Petitioner by the CA u/s 6(1) SAFEMA on 6th February 1981. The notice simply stated that the CA had "on the basis of relevant information" "reason to believe" that the properties described in the Schedule to the notice, held by the Petitioner, were "illegally acquired properties within the meaning of Clause (c) of Sub-section (1) of Section 3" SAFEMA.

8. The Petitioner states that even before issuance of the said notice, her husband Shri Sohan Singh had filed an affidavit dated 28th May 1990 with the CA stating that he belongs to a family of agriculturists and that he, along with his other two brothers, jointly owned 395 kanals and 7 marlas in village Naushera Dhalla. Affidavits dated 2nd October 1981 and 16th December 1982 on the same lines were submitted by him to the CA. Copies of the said affidavits have been enclosed with the writ petition. It is stated that pursuant to the aforementioned notice dated 6th February 1981 issued Section 6(1) SAFEMA, counsel for the Petitioner had filed before the CA copies of the documents and the statement filed with the income tax authorities about the acquisition of the properties in

question. Copies of the assessment orders passed by the Wealth Tax Department were also furnished to the CA.

9. It appears from para 5 of the order dated 4th February 1992 of the CA that the case before the CA was fixed for hearing on 26th April 1984 and notice had been issued u/s 7(1) SAFEMA requiring the Petitioner to produce her brother Shri Joginder Singh, whose affidavit dated 28th May 1980 had been filed, for cross-examination. Despite two adjournments Shri Joginder Singh was not produced. For nearly six years thereafter there were no proceedings. Meanwhile, Shri Sohan Singh died on 22nd January 1988. On 21st February 1990 a letter was received from the son of the Petitioner by the CA stating that on account of old age of the Petitioner she could not appear at the hearing. The CA noted in the order dated 4th February 1992 that the further notice sent to the Petitioner was received back with remarks "refused". In the circumstances, the impugned order dated 4th February 1992 came to be passed in the absence of the Petitioner.

10. The CA further noted in para 7 of the order dated 4th February 1992 that Shri Sohan Singh and the Petitioner''s brother Shri Joginder Singh were detained under the SAFEMA. The CA observed that "the husband of the A.P. was actively engaged in smuggling of gold across the Indo-Pakistan border and its subsequent disposal within the country and his only lawful source of income had been, out of his inherited agricultural land of 20 acres." At this stage, it requires to be noticed that there is no such averment in the show cause notice u/s 6(1) SAFEMA issued on 6th February 1981. Also as already noticed hereinbefore, the third detention order dated 8th November 1978 which contained similar allegations was quashed by the High Court of Punjab and Haryana on 3rd May 1979. The CA does not appear to have taken note of the above facts in the impugned order.

11. The CA then went into the details of the explanation offered by the Petitioner as to the source of her income as regards the seven room house at village Sur Singh, 40 acres of agricultural land at the same village, the house at Amritsar and one international tractor. While holding that the source of income for purchasing the tractor was properly explained, the CA concluded that the Petitioner could not explain the source for acquiring the other three properties.

12. The Tribunal has, by the impugned order dated 2nd November 1999, dismissed the Petitioner''s appeal and concurred with the CA that there was nothing on record except the affidavit filed by the Petitioner''s brother to indicate that the Petitioner had an independent income and that her parents had gifted money to enable the house at Amritsar to be bought. The Tribunal concluded that "the detenue had extremely meager resources of legitimate income and the acquisition of properties of a very substantial scale in the name of the detenue''s wife clearly indicated that Sohal Lal had been indulging in smuggling from a very early date."

13. Neither the notice u/s 6(1) SAFEMA nor the order of the CA indicates the period during which the Petitioner''s late husband Shri Sohan Singh is alleged to

have indulged in illegal activities. The absence of this detail renders the notice vague and lacking in material particulars. The very object of the SAFEMA is to ensure that the properties acquired through income from illegal activities should not be allowed to be retained by the person indulging in such illegal activities. There has to be shown to exist a nexus between the earnings from the illegal activities and the properties acquired. For this nexus to be established, it would have to be shown that the properties in question were acquired around the time when the detenu indulged in illegal activities that provided the income for the acquisition of the properties. Significantly, in the instant case the properties in question which formed the subject matter of forfeiture under the SAFEMA were admittedly purchased or acquired between 1957 and 1967. The CA was required be satisfied that these properties were acquired from the income earned by Shri Sohan Singh from illegal activities during this period. There is nothing in the notice u/s 6(1) SAFEMA or in the order of the CA that demonstrates this nexus. In other words there is no determination by the CA that during the time when these properties were acquired, i.e., between 1957 and 1967, Shri Sohan Singh had indulged in any illegal activity and that these properties were acquired with the earnings from such illegal activity. This therefore renders both the notice u/s 6(1) SAFEMA and the consequential order dated 4th February 1992 passed by the CA unsustainable in law.

14. The CA also does not appear to have noticed the absence of any satisfactory explanation for the delay in initiating the proceedings under SAFEMA. The first detention order against Shri Sohan Singh was passed on 1st July 1976, at least nine years after the acquisition of the last property in 1967. The notice u/s 6 SAFEMA was issued in 1982, more than five years after the detention.

15. While it may have been sufficient for the purposes of initiation of the SAFEMA proceedings u/s 6(1) that there was a valid detention order against Shri Sohan Singh, for the purposes of the final adjudication it had to still be shown that there was nexus between the illegal earnings and the properties sought to be forfeited. In this context the CA was required to take note of the fact that the two detention orders dated 1st July 1976 and 1st December 1976 could not have been challenged on account of the internal emergency during which there was a suspension of the provisions of the Constitution permitting the detention orders to be challenged by way of a writ petition in a High Court. It may be recalled that Shri Sohan Singh was released simultaneously with the lifting of the emergency on 27th March 1977. The second factor was that the further detention order passed on 8th December 1978 stood quashed by the High Court of Punjab and Haryana on 3rd May 1979. There was no basis, therefore, for the CA to observe that Shri Sohan Singh was indulging in smuggling activities for a long number of years. In any event, there was absolutely no material to enable the CA to be satisfied that Shri Sohan Singh was indulging in smuggling activities during the period when the properties in question were purchased by the Petitioner or in her name.

16. This Court finds that the impugned order dated 4th February 1992 of the CA in its dealing with the explanation offered by the Petitioner regarding her source of income reads more like an assessment order in proceedings under the Income Tax Act. The CA failed to appreciate that establishment of the nexus between the income from the alleged illegal activities of the Petitioner''s husband and the purchase or acquisition of the properties in question was essential in order to legally sustain the proceedings u/s 6 SAFEMA. The imperative need to establish such nexus has been explained in several decisions including P.P. Abdulla and Another Vs. The Competent Authority and Others, , Shri Gian Chand Garg v. Union of India [decision dated 14th September 2007 in Writ Petition (Civil) No. 4581 of 1996] and Shanti Devi Vs. Union of India (UOI) and Others,

17. For the aforementioned reasons, this Court sets aside the impugned order dated 4th February 1992 of the CA and the order dated 2nd November 1999 of the Tribunal and quashes the proceedings initiated against the Petitioner emanating from the notice dated 6th February 1981 u/s 6(1) SAFEMA.

18. The writ petition is allowed and the pending application is disposed of in the above terms.