(1990) 06 CAL CK 0017

In the Calcutta High Court

Case No : C.R. No. 4020 (W) of 1978

Smt. Juthika Rani Sil APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-06-1990

Acts Referred:

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 2, 2(2), 3, 3(1), 6

Citation : (1990) 50 ELT 247

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Narendra Ch. Saha, for the Appellant;N.L. Pal and Vijay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Susanta Chatterji, J.—The present Rule was issued at the instance of the writ petitioner challenging the notice dated 11th May, 1978 (Annex. A) issued by the respondent No. 2, the Competent Authority, Calcutta, Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.

2. It is contended that the purported notice is vague, devoid of particulars, and in fact, the same is not in conformity with the requirements as laid down u/s 6(1) of the said Act. The writ petition and the Rule are contested by the respondents.

3. Mr. Saha, learned Advocate for the writ petitioner has submitted that the respondent No. 2, could not have any reason to believe on the alleged information and/or relevant materials on the basis of which he could entertain any belief that the properties held by the writ petitioner were illegally acquired within the meaning of Section 3(l)(c) of the above-mentioned Act. The immovable properties as stated in the Schedule to the impugned notice have been acquired long prior to the promulgation of the Gold Control Act and the petitioner is not a person within the mischief of Section 2(2) of the said Act and

therefore the said impugned order is bad in law.

4. Mr. Pal, learned Advocate for the respondents referred to various provisions of the said Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. Section 2 thereof provides the applicability of the provisions of the Act to person specified in Sub-section (2). The records have been produced before this Court by the respondents that the petitioner''s husband is a convict and the petitioner being the spouse of a person, who has been convicted as enumerated in Explanation (2) cannot avoid the applicability of the said Act. He has also drawn the Court''s attention to Section 3(1)(c) of the said Act which indicates, inter alia, that unless the context otherwise requires, the ''illegally acquired property'' is in relation to any person to whom this Act applies. Learned Advocate for the respondents also has drawn court''s attention to Section 7 relating to forfeiture of property in certain cases. Section 7 indicates, inter alia, that the competent authority may, after considering the explanation, if any, to the show cause notice issued u/s 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties. Said Section 7 further states that where the competent authority is satisfied that some of the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under Sub-section (1) of Section 7. It is further provided in Sub-section (3) of Section 3 that where the competent authority records a finding under that section to the effect that any property is illegally acquired, it shall declare that such property shall, subject to the provisions of the said Act, stand forfeited to the Central Government free from all encumbrances. Further, where any shares in a company stands forfeited to the Central Government under the said Act, then the Company shall, notwithstanding anything contained in the Companies Act, 1956, or the Articles of Association of the Company, forthwith register a claim to the Central Government as the transferee of such shares.

5. Considering the submissions of the learned Advocates for both the sides, this Court is of the view that regard being had to the materials on record and being satisfied with the fact that the Act is applicable to the writ petitioner being a spouse of the person as covered by Clauses 2(2)(a) and (b) of the said Act and liable to be issued with the impugned notice to show cause, the issuance of the notice thereof in this case does not appear to be irregular and illegal nor is it in excess of and/or without jurisdiction. The scope of the writ petition is to examine as to whether the initiation of the proceedings is without jurisdiction or in excess thereof. This Court is not going to consider the propriety of the notice or the merit of the proceedings subsequent to the notice. The stage has yet to be reached. As the Writ Court does not find any irregularity and/or illegality in the

issuance of the impugned notice to show cause, there is nothing for this writ court to interfere.

6. For the foregoing reasons, the writ petition is dismissed and the Rule is discharged. All interim orders, if any, are vacated. It is made clear that this Court has not considered the merit of the petitioner''s reply to the show cause; and the competent authority u/s 7 as above, will act and go on considering the matter on merit by extending all reasonable opportunities to the petitioner as admissible under law. The petitioner is entitled to receive copies of the reasons and all other documents to be relied upon by the said competent authority.

7. There will be no order for costs.

