

(2024) 10 GUJ CK 0044

In the Gujarat High Court

Case No : Special Criminal Application No. 2797 of 2012

Tejas R Doshi Versus

APPELLANT

Vs

Competent Authority & Anr.

RESPONDENT

Date of Decision : 14-10-2024

Acts Referred:

Constitution of India, 1950 — Articles 226

Provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 — Section 2, 2(2)(b), 2(2)(e), 3, 3(1)(c), 3(1)(c)(A), 6, 6(1), 7, 8, 10, 11, 12, 18, 19, 19(1)

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 — Section 3(1)

Citation : (2024) 10 GUJ CK 0044

Hon'ble Judges : Ilesh J. Vora, J; S.V. Pinto, J

Bench : Division Bench

Advocate : Nisha M Parikh, Harsheel D Shukla

Final Decision : Dismissed

Judgement

S.V. Pinto, J

1. By way of the present petition, filed under Article 226 of the Constitution of India, the petitioners have challenged the orders passed by the respondent nos. 1 and 2 on 03.10.2011 and 30.01.2012 respectively by which the residential property situated at 3rd Floor, F/301, Malabar Hill Society, Surat came to be forfeited under the provisions of Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "SAFEMA").

2. The brief facts giving rise to filing of the present petition are as under:

2.1 In May 2010, the petitioner was introduced to one Keshnath S. Yadav who expressed his willingness to sell the property and the petitioner had taken due care and diligence by way of search of the record of Sub Registrar and Revenue authorities. The petitioner did not find anything objectionable in respect of title of the property and the petitioner entered into an agreement to sell with the said

Keshnath S. Yadav on 01.10.2010 and paid an amount of ₹ 20,51,000/- vide five cheques. The remaining amount was to be paid within 75 days or 2½ months from the date of execution of the agreement. The sale deed was executed on 22.10.2010 and was registered with the Sub Registrar and the petitioner made full payment of the amount of ₹ 40,11,000/- to the vendor Keshnath S. Yadav. The name of the petitioner was entered in the record and the petitioner is in possession of the said property. On 05.10.2011, the petitioner received the notice regarding forfeiture of the property pursuant to proceedings under SAFEMA and upon inquiry, it came to the knowledge of the petitioner that SAFEMA proceedings were initiated against Narendra Champaklal Shah and it was found that the property was purchased by Kantilal Chaganlal Shah - the brother-in-law of Narendra Champaklal Shah, from the income of the said Narendra Champaklal Shah and both of them were prosecuted under SAFEMA. A detention order was passed by the Government of Gujarat on 18.08.1997 against Narendra Champaklal Shah under the provisions of Section 3(1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as "COFEPOSA" for short) and the order of detention was not quashed or revoked by any Court of competent jurisdiction or any Advisory Board. During the pendency of these proceedings, Kantilal Chaganlal Shah sold the property to Keshnath Yadav who further transferred the property to the petitioner.

2.2 After receipt of the order dated 03.10.2011 passed by the respondent no. 1, the petitioner preferred an appeal under Section 12 of SAFEMA and after hearing the parties, the respondent no. 2 vide the order dated 30.01.2012 was pleased to reject the appeal of the petitioner and the order was communicated to the petitioner on or after 13.02.2012.

2.3 Even though the petitioner was not served with any notice or order as required under Section 19 of the SAFEMA, on 27.02.2012 the officers entered the premises of the petitioner in the absence of the petitioner and forcibly took possession of the property and after the seal was applied to the property, the order under Section 19(1) of the SAFEMA was served upon the petitioner.

3. Being aggrieved and dissatisfied with the same, the petitioner has filed the present petition under article 226 of the Constitution of India mainly contending that the petitioner was not joined as a party to the proceedings and the relevant documents were not supplied to the petitioner at the time of the appeal. Both the authorities have lost sight of the fact that the petitioner is the transferee of the property in good faith for adequate consideration and the petitioner has taken due care and diligence before purchasing the property. The petitioner had no occasion to learn about the pendency of the proceedings, even while carrying out the search at the office of the revenue authorities and as the petitioner is a bona fide purchaser of the said property with full consideration, is entitled to protection under the Transfer of Properties Act as also under the provisions of SAFEMA. The impugned orders erroneously declare the property to be "illegally

acquired property” without advertent to the exclusion of the definition of the property in terms of the definition under Section 3(1)(c) of the SAFEMA which is held by the petitioner who is a transferee in good faith. The impugned orders are not tenable and the petitioner has filed the petition praying to annul the impugned orders.

4. Heard learned Advocate Mrs. Nisha Parikh for the petitioner and learned Standing Counsel Mr. Harshil D. Shukla for the respondents.

5. Learned Advocate Mrs. Nisha Parikh for the petitioner has submitted that the impugned orders are not binding to the petitioner as the petitioner is a bona fide purchaser of the property with full consideration and entitled to protection. At the time of purchase of the property, the petitioner had taken due care and diligence and had carried out a search in the office of the Sub Registrar, Surat and also in the office of the cooperative society, where the property is situated and even after undertaking the exercise, the petitioner was not informed about the pendency of the proceedings under SAFEMA and there was no entry in the revenue record showing that the property is forfeited. Even at the time of presenting the sale deed for registration, the Sub Registrar, Surat accepted the sale deed and did not inform the petitioner about any pendency of the proceedings. Learned Advocate further submits that the provisions of SAFEMA do not apply to the petitioner as Section 2 of the SAFEMA specifies the categories of persons to whom the provisions of SAFEMA shall apply and it includes the holder of any property which was previously held by any person convicted under the Foreign Exchange or Customs statutes or against whom an order of detention has been passed under the COFEPOSA. The second ground raised by the learned advocate is that the respondent have erroneously declared the property to be “illegally acquired property” as the petitioner is not a person to whom the provisions of SAFEMA apply and Section 2(2)(e) and Section 3(1)(c)(A) of SAFEMA carve out exceptions to the application of SAFEMA and clearly recognises that the person and the property involved in transfer in good faith for adequate consideration is beyond the application of SAFEMA.

5.1 In view of the aforementioned submissions, learned advocate for the petitioner has submitted that the impugned orders passed by the respondents on 03.10.2011 and 30.01.2012 are unenforceable, void and passed in violation of the mandatory provisions of SAFEMA and deserve to be quashed.

6. Learned Standing Counsel Mr. Harshil D. Shukla for the respondents has submitted that the Government of Gujarat had issued the detention order vide No.F.No.673/87/97CusVIII dated 18.08.1997 under the provisions of Section 3(1) of COFEPOSA against Narendra Champaklal Shah and the detention order was neither quashed by any Court of competent jurisdiction nor revoked by any Advisory Board and Narendra Champaklal Shah was the person defined in Section 2(2)(b) of SAFEMA. Kantilal Chaganlal Shah is the husband of the sister of Narendra Champaklal Shah and is a person falling within the definition of relative as per SAFEMA. The proceedings under SAFEMA was initiated against

both, by way of issuing a show cause notice on 27.05.2004 and the notice was sent to all the concerned authorities including Narendra Champaklal Shah and Kantilal Chaganlal Shah. The property was declared forfeited under Section 7 of SAFEMA vide order dated 03.12.2007 and the order was served to all the concerned authorities. After the issuance of the order, Keshnath S. Yadav claimed to have purchased the property and preferred an appeal before the Appellate Tribunal for Forfeited Property and produced the registered sale deed dated 30.08.2005 which was more than one year from the issuance of the show cause notice dated 27.05.2004. Learned Standing Counsel further submits that the officers visited the property on 15.09.2011 and the property was found vacant and on inquiry, the security guard informed the officers that the petitioner had purchased the flat. The officers contacted the petitioner and asked him to provide the documents but he denied to provide any such documents and Kantilal Chaganlal Shah gave an affidavit stating that the investment in the property was made by Narendra Champaklal Shah who used to purchase property in his name, as FEMA case was pending against him and there were chances of forfeiture and Narendra Champaklal Shah was the real owner/investor of the property. An order under section 19 was issued on 21.11.2011 intimating the petitioner to handover the possession of the forfeited property and the petitioner preferred the appeal which was dismissed by the respondent no. 2 by an order dated 30.01.2012. The transfer made after the issue of the show cause notice is supposed to be ignored and treated null and void and accordingly the sale deeds dated 30.08.2005 and 30.12.2010 executed after the issuance of the show cause notice dated 27.05.2004 is void, ineffective, inoperative, and have no force or effect in law.

6.1 In support of his submission learned Standing Counsel Mr. Harshil D. Shukla has placed heavy reliance on the decision of the Apex Court in the case of Winston Tan & Anr. V. Union of India & Anr. reported in 2012 (10) Supreme Court Cases 222.

7. We have heard at length the learned advocates appearing for the respective parties and have perused the materials placed on record and also the affidavit in reply file on behalf of the respondents opposing the petition.

8. Before advertng to the submissions, it is necessary to examine the legal statutory provisions of the SAFEMA. In the case of Winston Tan (*supra*), the Supreme Court examined the scope and applicability of the provisions of the SAFEMA and the same has been discussed and referred in Paras-15 to 21, which have been reproduced as under:

"15. SAFEMA came into effect from 5-11-1975. It, inter alia, provides for forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators. Its applicability is provided in Section 2. Sub-section (1) of Section 2 provides that the provisions of SAFEMA shall only apply to persons specified in sub-section (2). Clause (b), amongst others, covers the persons in respect of whom an order of detention has been made under COFEPOSA and such order has

not been revoked or set aside in any of the situations set out in the four sub-clauses of the proviso. Clause (c) of sub-section (2) of Section 2 applies to the relatives of persons referred to in clauses (a) or (b) while clause (d) applies to the associates of persons referred to in clauses (a) or (b). Clause (e) of sub-section (2) of Section 2 refers to a holder of property. It reads as under:

"2. Application.—(1) *****

(2) The persons referred to in sub-section (1) are the following, namely:-

(e) any holder (hereinafter in this clause referred to as the present holder) of any property which was at any time previously held by a person referred to in clause (a) or clause (b) unless the present holder or, as the case may be, any one who held such property after such person and before the present holder, is or was a transferee in good faith for adequate consideration."

16. Section 3 defines various expressions. Section 3(1)(c) defines 'illegally acquired property' which reads as follows:

"3. Definitions.- (1) In this Act, unless the context otherwise requires,--

(c) "illegally acquired property", in relation to any person to whom this Act applies, means-

(i) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before or after commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to

(iii) or the income or earnings from such property ; and includes-

(A) any property held by such person which would have been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is

or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;"

17. Section 4 prohibits holding of illegally acquired property which reads as follows:

"4. Prohibition of holding illegally acquired property. —

(1) As from the commencement of this Act, it shall not be lawful for any person to whom this Act applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provision of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Act."

18. Section 6 provides for issuance of show cause notice before forfeiture of illegally acquired property while Section 7 provides for passing of final orders in that behalf. These provisions read as under:-

"6. Notice of forfeiture.--(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or assets, any other information or material available to it as a result of action taken under Section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) Where a notice under sub-section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

"7. Forfeiture of property in certain cases.—(1) The competent authority may, after considering the explanation, if any, to the show-cause notice issued under Section 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.

(2) 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).

(3) Where the competent authority records a finding under this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares."

19. Section 8 provides that burden of proving that property specified in the notice served under Section 6 is not illegally acquired property shall be on the person affected.

20. Section 11 declares transfers of properties specified in the notice issued under Section 6 null and void when such transfers are effected after the issuance of notice. Section 11 reads as follows :

"11. Certain transfers to be null and void.—Where after the issue of a notice under Section 6 or under Section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purpose of the proceedings under this 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."

21. Section 19 makes a provision for taking possession of the property which has been declared to be forfeited to the Central Government and where the person affected as well as any other person who may be in possession of the property fails to surrender or deliver possession. Section 19 reads as under :

"19. Power to take possession.—(1) Where any property has been declared to be forfeited to the Central Government under this Act, or where the person affected has failed to pay the fine due under sub-section (1) of Section 9 within the time allowed therefor under sub-section (3) of that section, the competent authority may order the person affected as well as any other person who may be in possession of the property to surrender or deliver possession thereof to the competent authority or to any person duly authorised by it in this behalf within thirty days of the service of the order.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may take possession of the property and may for that purpose use such force as may be necessary.

(3) Notwithstanding anything contained in sub-section (2), the competent authority may, for the purpose of taking possession of any property referred to in sub-section (1), requisition the service of any police officer to assist the competent authority and it shall be the duty of such officer to comply with such requisition."

9. In light of the settled statutory provisions in the case of Winston Tan(Supra) and considering the facts of the present case, it is an admitted fact that a detention order was issued against Narendra Champaklal Shah on 18.08.1997 and the order of detention was not quashed by any court of competent jurisdiction and accordingly Champaklal Shah was a person covered under the provisions of SAFEMA. Kantilal Chaganlal Shah, being the husband of the sister of Narendra Champaklal Shah was a relative and an affected person and on inquiry, it was found that Narendra Champaklal Shah had invested his illegally earned income in the property in the name of Kantilal Chaganlal Shah and an order to forfeit the property to the Government of India under section 7 of SAFEMA was passed by the respondent no. 1 on 03.12.2007 and a copy of the order was sent to all the concerned authorities. After the order of forfeiture of property was issued, one Keshnath S. Yadav preferred Appeal No. 01/BOM/2008 and produced the registered sale deed dated 30.08.2005 of the property which showed that the property was transferred after more than one year from the issuance of the show cause notice dated 27.05.2005. Narendra Champaklal Shah and Kantilal Chaganlal Shah filed Appeal No. FPA-08/BOM/2008 and by an order dated 18.12.2008 and Corrigendum dated 19.02.2009, the matter was remanded back to the Competent Authority. The officers of SAFEMA visited the property and found that Rajendra Yadav was residing in the property and on 15.11.2011 found that the property was purchased by the present petitioner. Mr Kantilal Chaganlal Shah submitted an affidavit dated 04.01.2012 and declared on oath that Narendra Champaklal Shah was his wife's brother and had FEMA and custom cases pending against him and apprehended that his properties would be forfeited and purchased the property in his name. The entire investment in the property was done by Narendra Champaklal Shah and after the show cause notice was received, Narendra Champaklal Shah instructed him to transfer the property to the name of Rajendra Yadav and a power attorney was prepared in the name of his friend - Chandrakant Patel. The property was transferred to Rajendra Yadav but no money was received by him and as per his knowledge, as the property was forfeited, even though it was transferred to Rajendra Yadav, the property was transferred to another personal friend Tejasbhai Doshi and an order under Section 7 of SAFEMA was passed on 03.10.2011 and a copy of the order was sent to all concerned authorities and to the present petitioner. The petitioner preferred Appeal No. 07/BOB/2011 and by an order dated 30/01/2012 the appeal was dismissed. It is an admitted fact that the show cause notice under

section 6(1) of SAFEMA was issued on 27.05.2004 and thereafter, litigation proceedings have taken place before the respondents and the property was transferred in the first instance on 30.05.2005 more than one year after the issuance of the show cause notice.

10. In light of the decision of the Apex Court in the case of Winston Tan (Supra), when it is admitted that the detenu Narendra Champaklal Shah and the holder of the property - Kantilal Chaganlal Shah were both issued notices under section 6(1) of SAFEMA on 27.05.2004 before the transaction of sale in favour of Rajendra Yadav or Keshnath Yadav, the transaction of sale has to be ignored by virtue of Section 11 and on passing of the order of forfeiture under Section 7 the sale of the property had become null and void. Section 11 of SAFEMA intends to avoid transfer of property by the persons covered under Section 2(2)(a) to (e) during the pendency of forfeiture proceedings and any transfer of the property referred to in the notice shall be ignored and the holder cannot set up a plea that he is a transferee in good faith or a bona fide purchaser for adequate consideration. The plea that the transferee is a bona fide purchaser is not available if the property is purchased during the forfeiture proceedings as no title is vested in the purchaser by virtue of the sale deed as the vendor could not have transferred the property after the receipt of the notice under section 6(1) of SAFEMA. In the instant case, the initiation of SAFEMA proceedings was known to the detenu Narendra Champaklal Shah and Kantilal Chaganlal Shah and the proceedings were well within their knowledge and they did not have any title or right to sell the property. The facts of the present case are fully covered by the dictum as laid down by the apex Court in Winston Tan (supra) and we are of the considered view that the petitioner cannot get the benefit of Section 2(2)(e) of SAFEMA and consequently, we find no merits in the present petition.

11. The present petition being devoid of merits stands dismissed. Interim relief, if any granted earlier stands vacated forthwith.