

(2011) 07 MAD CK 0004
In the Madras High Court
Case No : W.A. No. 967 of 2009

The Competent Authority

APPELLANT

Vs

Parvathi Bai

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 —
Section 10, 11, 19, 2(2), 6

Citation : (2011) 6 MLJ 537

Hon'ble Judges : K.K. Sasidharan, J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Haja Mohideen Gisthi, SCGSC, for the Appellant; No appearance,
for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J

1. This appeal, at the instance of the competent authority under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act,

1976 challenges the order dated 11 November, 2008 in W.P. No. 31869 of 2003, setting aside the order of forfeiture.

The facts:

2. The property, which is the subject matter of this appeal was initially purchased by Mrs. Sulaikha Beevi, wife of Mr. K.K. Sheikh Dawood. The

said Sheikh Dawood was involved in proceedings under The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

and he was detained on several occasions by the Customs department. The department found that it was only with the money contributed by the

detenu, Sulaikha Beevi purchased the property. Therefore, proceedings were

initiated to confiscate the property.

3. The Competent Authority issued a notice to Mrs. Sulaika Beevi u/s 6 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of

Property) Act, 1976 (hereinafter referred to as "SAFEMA") on 21 October, 1978. She received the notice on 31 October, 1978. The

Competent Authority ultimately passed an order u/s 7(1) of SAFEMA on 24 February, 1995. The said order has become final.

4. The Competent Authority as per notice dated 13 October, 2003 directed Smt. Sulaikha Beevi to surrender the property. The said notice was

challenged before the writ Court in W.P. No. 31869 of 2003 at the instance of the Respondent. Before the learned Single Judge, the Respondent

contended that she was a bonafide purchaser for valuable consideration and though the sale deed was executed subsequent to the notice u/s 6 of

SAFEMA, payments were made even before. The purchase was not with the knowledge of the proceedings. It was her further contention that she

is entitled to the benefit of Section 2(2)(e) of SAFEMA as she is a bona fide purchaser for value. Therefore, the order passed by the Competent

Authority u/s 7(1) of SAFEMA behind her back is unsustainable.

Views of learned Judge:

5. The learned Single Judge allowed the writ petition mainly on the ground that payments were made on various dates commencing from January,

1978 and ending with 8 January, 1978. Therefore, consideration was paid before the initiation of proceedings on 21 October, 1978. In view of the

payment of sale consideration even before the notice u/s 6(1) of SAFEMA, the sale made on 13 November, 1978 cannot be construed to be a

transaction subsequent to the initiation of proceedings. Accordingly, the order was quashed.

6. Dis-satisfied with the said order, passed by the writ Court, the Competent Authority has come up by way of this Intra Court appeal.

Submissions:

7. The learned Senior Central Government Standing Counsel contended that the sale in question was made only after the commencement of

proceedings u/s 6(1) of SAFEMA and as such it was an invalid sale. It was his further contention that the original land owner was aware of the

proceedings and knowing fully well, she sold the property and therefore, the

order passed against her is binding on the transferee. In any case, according to the learned Counsel, the sale is hit by Section 11 of SAFEMA and therefore, the learned Single Judge was not correct in quashing the proceedings.

Discussion:

8. The proceedings under SAFEMA was initiated against Mrs. Sulaikha Beevi, wife of detenu K.K. Sheikh Dawood and it was commenced by

issuing notice u/s 6 of SAFEMA. Notice of forfeiture issued on 21 October, 1978 was accompanied by reasons, which actually weighed with the

Competent Authority to initiate action. The addressee received the notice on 31 October, 1978. It was only thereafter, the Respondent purchased

the property by way of a sale deed executed on 13 November, 1978.

9. The notice dated 21 October, 1978 was challenged by the land owner Mrs. Sulaikha Beevi and her husband K.K. Sheikh Dawood before this

Court in W.P. No. 333 of 1979. The writ petition was dismissed on 18 July, 1994 following the judgment of the Supreme Court in Attorney

General for India and Others Vs. Amratlal Prajivandas and Others, upholding the constitutional validity of SAFEMA. The land owner was given

time to file her objections and the Competent Authority was directed to decide the matter on merits and as per law.

10. Thereafter, the Competent Authority considered the matter. Though Mr. Sheikh Dawood appeared before the Competent Authority, Mrs.

Sulaikha Beevi, failed to appear before the authority. The Competent Authority considered the explanation given by Mr. Sheik Dawood and the

deposition of Mrs. Sulaikha Bee viand rejected the same after indicating sufficient reasons. The order has become final. In short, the order of

Forfeiture dated 24 February, 1995 had attained finality.

11. Before the writ Court, the learned Counsel for the Respondent relied on Section 2(2)(e) of SAFEMA in support of his contention that the

Respondent was a bona fide transferee in good faith for adequate consideration and as such, proceedings cannot be initiated in respect of the said

property. Though the learned Single Judge has not considered the said issue, we consider it fit and proper to decide the said question even though

there was no appearance on behalf of the Respondent during the course of hearing the writ appeal.

The statutory provisions:

12. Section 2(2)(e) reads thus:

2. Application: (1) The provisions of this Act shall apply only to the persons specified in Sub-section (2)

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

(a) to (d) ...

(e) any holder (hereinafter in this clause referred 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.

13. Section 11 invalidates transfer of property pending proceedings for forfeiture. It reads as follows:

11. Certain transfers to be null and void. Where after the issue of a notice u/s 6 or u/s 10, any property referred to in the said notice is transferred

by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently

forfeited to the Central Government u/s 7, then, the transfer of such property shall be deemed to be null and void.

The issue:

14. The question is whether a transferee of property, who purchased the property subsequent to the issue of forfeiture notice u/s 6 of SAFEMA

can take advantage of this provision to contend that she is a transferee in good faith for adequate consideration.

15. Section 2(2)(e) was incorporated with a view to save the property purchased by an innocent purchaser, before initiating proceedings under

SAFEMA. It was not intended as a protective umbrella to those, who have made purchases subsequent to the initiation of proceedings.

16. Section 11 was introduced to avoid transfer of subject property during the pendency of forfeiture proceedings. In case, transfers are

recognised during the enquiry stage, subsequent purchasers should be impleaded and the competent authority has to decide the question of good

faith. Therefore, a freehand was given to the competent authority to ignore all such transfers made after the issuance of notice u/s 6(1) of

SAFEMA, meaning thereby he is not bound to issue notice to such subsequent purchasers, whether it be a bonafide or mala fide transaction.

17. The transfers made after notice u/s 6(1), though a non cognizable transaction originally, would become a null and void transaction, the moment forfeiture order is passed u/s 7 of SAFEMA. When the transaction is deemed to be null and void, there is no question of considering the good faith or valuable consideration.

18. Section 7(3) of SAFEMA provides for statutory vesting. The finding regarding illegal acquisition of property and the consequential declaration of forfeiture by the competent authority would result in statutory transfer of ownership of property. The Central Government would thereafter become the absolute owner of the property free from all encumbrances.

19. The procedure for forfeiture would commence by the issue of notice u/s 6(1) of SAFEMA and it would close by passing an order u/s 7. The order of forfeiture passed by the competent authority would relate back to the date of issue of notice u/s 6. Therefore, Section 7 has to be read along with Sections 6 and 11 and a combined reading of these provisions would reveal the real spirit behind Section 11 of SAFEMA. The transfer pending proceeding would be an irregular transaction not binding on the competent authority. When the proceedings culminate in passing an order of forfeiture, the transfer of property pending forfeiture proceeding would become a null and void transaction. Therefore, till a declaration is made u/s 7(3), after recording a finding under sub Clause 2 of Section 7, the transfer pending proceeding would not constitute a tainted sale, void ab initio.

20. The Supreme Court in Aamenabai Tayebaly and Others Vs. Competent Authority under Safema and Others, , observed that transfer of property pending proceedings u/s 6 or 10 of SAFEMA and prior to the order of forfeiture shall be treated to be null and void.

21. Section 11 of SAFEMA invalidates all those transactions which have taken place subsequent to the notice u/s 6 or u/s 10. Therefore Section 2(2)(e) has to be read in the light of Section 11 of SAFEMA. This gives a clear indication that only those transactions which were made prior to the initiation of proceedings alone would be saved and not such of those transactions which have taken place subsequent to the issuance of notice

u/s 6, proposing to forfeit the property. Since the transfer made after initiation of forfeiture proceedings u/s 6 is statutorily invalidated, there is no

question of saving those transactions by invoking Section 2(2)(e) of SAFEMA. We are, therefore, of the view that the protection given to a bona

fide sale would not extend to a sale made subsequent to the issuance of notice u/s 6 and in violation of Section 11 of SAFEMA.

22. We, therefore, hold that it is not open to a transferee of property hit by Section 11 of SAFEMA to resist the forfeiture proceedings and

challenge the order under Sections 7(2) and 7(3) on the ground that he is a bona fide purchaser and the transaction was made in good faith for

adequate consideration and that he is entitled to the benefits of Section 2(2)(e) of SAFEMA.

23. The learned Single Judge quashed the possession notice dated 13 October, 2003 solely on the ground that the purchase price paid in

instalments were sufficiently earlier to the issuance of notice u/s 6 of SAFEMA.

24. We have perused the sale deed executed in favour of the Respondent on 13 November, 1978. There is a recital in the said document that

payments were made on five occasions and the last of such payment was made on 8 January, 1978. The payments were all made by way of cash

and it was not through draft or cheque. Therefore, it was nothing but a self serving statement. The recitals regarding payment of consideration, much

before the execution of sale deed was made with a definite purpose. It was only to avoid the statutory proceedings and to save the document from

the statutory invalidation, such a statement was made in the sale deed.

25. Even though the entire sale consideration was paid as on 8 January, 1978, the document was registered only on 13 November, 1978. The

factum of registration on 13 November, 1978 after receiving notice u/s 6 on 31 October, 1978 clearly proves the lack of bona fides in the

transaction. In case payments were made earlier, nothing prevented the vendor to execute the document in favour of the Respondent immediately

after the receipt of final payment. No prudent purchaser would wait indefinitely to get the sale deed registered, after making full payments. The very

fact that the document was executed after receiving the notice on 31 October, 1978 clearly shows that the sale deed was executed with full

knowledge of the proceedings. This aspect was not considered by the learned

Single Judge.

26. Even otherwise, the date of payment of sale consideration is immaterial. The date of execution of the sale deed alone is material. The sale in question was for a sum of Rs. 18,000/-. Therefore the document must compulsorily be registered. So the material date, for all practical purposes is the date of registration of sale deed.

27. The sale deed was executed only on 13 November, 1978 about twenty four days after issuing notice u/s 6 and twelve days after receipt of the said notice by the land owner. Therefore, the recitals regarding earlier payments were made with an intention to over come the statutory invalidation as provided u/s 11 of SAFEMA.

28. We are not inclined to accept the views expressed by the learned Single Judge regarding the payment of consideration before the notice u/s 6 as a ground to set aside the order of confiscation.

29. The notice dated 21 October, 1978 was challenged by Mrs. Sulaikha Beevi represented by her husband in W.P. No. 333 of 1979. The

Respondent was not a party to the said writ petition. While granting interim order on 5 February, 1979, this Court restrained the writ Petitioner from alienating the property. Even though sale was made as early as on 13 November, 1978, the factum of such sale was not disclosed before the

writ Court. The writ petition was disposed of on 18 July, 1994. It was only thereafter i.e. on 24 February, 1995, the order u/s 7(1) of SAFEMA

was issued. This was followed by an order u/s 19(1) on 28 October, 1998, directing the land owner to surrender property. Even then the property

was not surrendered. Therefore, the impugned notice dated 13 October, 2003 was issued to hand over vacant possession of the property within

thirty days. It was only the said notice which was challenged by the Respondent in the writ petition.

30. The Respondent has no case that she was not aware of these proceedings. The Respondent was sitting on the fence and she was watching the

entire proceedings. The fact that Mrs. Sulaikha Beevi challenged the proceedings dated 21 October 1978 by filing writ petition in W.P. No. 333

of 1979 even after the sale in favour of the Respondent indicates that it was a fraudulent transaction intended to defeat the statutory proceedings.

Mrs. Sulaikha Beevi has no interest in the property subsequent to 13 November,

1978. Therefore, the fact that she challenged the proceedings thereafter and obtained an interim order shows that the property continues to be in her possession only and the sale was only a make-belief affair to get over the proceedings initiated by the Competent Authority.

31. The order impugned in the writ petition was only a possession notice. It was nothing but a consequential proceedings issued by the statutory authority pursuant to the final order passed u/s 7(1) of SAFEMA on 24 February, 1995. The order passed by the Competent Authority contains sufficient reasons justifying the order of forfeiture. The said proceedings has become final. It is not open to the transferee, whose sale was statutorily invalidated to challenge the possession notice. The Respondent has been banking upon Section 2(2)(e) to relieve the property from forfeiture proceedings. Since the sale was made only after initiation of proceedings u/s 6, it is void u/s 11 of SAFEMA. Therefore, Section 2(2)(e) of SAFEMA cannot be relied onto avoid the sale as the same being statutorily invalidated u/s 11 of SAFEMA.

32. The learned Judge has incidentally referred to the permission granted by the Reserve Bank of India on 15 April, 1978 to sell the property. The land owner appears to have taken permission on account of her Malaysian nationality. The permission obtained from the Reserve Bank of India cannot be taken as a factor to save the property from the legal bar contained u/s 11 of SAFEMA.

33. The landlady was given an opportunity to prove that the purchase of property was not with tainted money. However she miserably failed in her attempt to save the property.

34 The burden of proving that the property is not an illegally acquired property is on the person affected. Section 8 of SAFEMA gives an initial statutory presumption that the property shown in the notice u/s 6(1) was an illegally acquired property. That is why the competent authority was required to record his reason regarding illegal acquisition of property. The legislature wanted the person affected to prove that it was not an illegally acquired property rather than the authority proving that it was purchased with the help of tainted money. The burden of proof never shifts on the authority at any stage of the proceeding, after the reasoned u/s 6(1) of SAFEMA.

35. The writ petition filed by the Respondent is liable to be rejected for more

than one reason. The only challenge was to the notice issued u/s 19 of SAFEMA proposing to take possession of property. This was only a consequential action pursuant to the order passed u/s 7(1) of SAFEMA.

Admittedly, the vendor of the Respondent has not challenged the proceedings. Similarly, there was no challenge to the forfeiture order at the

instance of the Respondent also. The substantive order has become final. The consequential action to take possession was nothing but an execution

proceedings. The notice regarding possession cannot be set aside unless the order u/s 7(1) is set aside in the manner known to law.

36. Therefore, unless and until the statutory order made u/s 7(1) of SAFEMA is set aside, the Respondent cannot maintain the writ petition,

challenging the consequential proceedings issued u/s 19 of the said Act. Therefore, the writ petition itself should have been dismissed on the

preliminary point.

Conclusion:

On a careful consideration of the entire factual matrix, we are of the considered view that the learned Single Judge was not justified in quashing the

impugned possession notice. Accordingly, the order dated 13 October, 2003 is set aside and the writ petition is dismissed.

38. In the upshot, we allow the writ appeal. No costs.