

(2001) 12 DEL CK 0019

Delhi High Court

Case No: CW 7697, 7698 and 7699 of 2001 and CMs 13179-80, 13181-82 and 13183-84/01

Balwinder Kaur

APPELLANT

Vs

Union of India and Others

Paramjit Kaur Vs Union of India
and Others
 Kuldip Singh Vs
Union of India and Others

RESPONDENT

Date of Decision: Dec. 19, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 - Section 15, 6(1), 6(2)

Hon'ble Judges: Mukul Mudgal, J

Bench: Single Bench

Advocate: L.P. Dhir, for the Appellant; K.K. Sud, A.S.G., Amit Bansal, Neeraj Jain, Adish C. Aggarwala and Neeraj Goyal, for the Respondent

Final Decision: Dismissed

Judgement

Mukul Mudgal, J.

This judgment will govern the disposal of the three writ petitions. These writ petitions challenge the Show Cause Notice dated 31st of October, 2001, issued u/s 6(1) read with Section 6(2) of the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as "the SAFEMA"). By this notice, the Competent Authority u/s 15 of the Act had issued Show Cause Notice u/s 6(1) read with Section 6(2) of the SAFEMA to the petitioners to indicate the sources of their income, earnings or assets out of which or by means of which the properties in question are said to be acquired.

2. The learned counsel for the petitioners has sought to challenge the aforesaid Show Cause Notice itself by way of filing a writ petition directly under Articles 226 & 227 of the Constitution of India rather than replying to the show cause notice.

3. The learned counsel for the petitioners in the writ petitions has categorized the following 7 reasons to challenge the show cause notice:-

"(i) Impugned Notice is vague & non-specific & does not disclose elementary details of specific property, date of purchase and the illegal activity of Detenu to which connected.

(ii) Reason to belief dated 17.2.2000 does not generate honest and bonafide belief that the above-said properties are illegally acquired properties.

(iii) Notice u/s 6(1) Dated 17.2.2000 already issued and above properties forfeited.

(iv) No prima facie case for issuing forfeiture notice.

(v) No nexus or connection with detenu's illegal activity.

(vi) Directions by the Appellate Tribunal is illegal in law.

(vii) Issuing of show cause notice to the petitioner is malafide and without jurisdiction."

4. In so far as the first reason is concerned about the notice being vague & non-specific, it is the petitioner's own case that they are aware of the properties involved in the notice of forfeiture and consequently this plea is untenable.

5. In so far as the second reason is concerned that the reason to belief dated 17.2.2000 does not generate honest and bona fide belief that the properties are illegally acquired properties, it is open to the petitioners to show cause and to satisfy the Competent Authority about the said averment.

6. In so far as the third reason is concerned that the Notice u/s 6(1) dated 17.2.2000 was already issued and above properties forfeited, it is open to the petitioners to show cause to the Competent Authority to demonstrate as to whether the notice is otiose in view of the earlier Order of Forfeiture dated 17.2.2000.

7. In so far as the fourth reason is concerned that there is no prima facie case for issuance of forfeiture notice and reliance on the Nine Judges' judgment in [Attorney General for India and Others Vs. Amratlal Prajivandas and Others](#), is concerned, at this stage it is not open for this Court to delve into this issue. It is open to the petitioners to satisfy the Competent Authority about this plea to seek withdrawal of the show cause notice. It may not be out of place to mention that the petitioners are the wife/sister-in-law/brother of the detenu and the petitioners' case that these properties were purchased much prior to the first ever illegal activities is a plea which can also be advanced in reply to the show cause notice and cannot be a ground for interference at this stage in writ jurisdiction.

8. In so far as the fifth reason is concerned that the lack of nexus & connection with the detenu's illegal activity is also a plea which may be urged before the Competent Authority and not directly in writ jurisdiction under Articles 226 & 227.

9. In so far as the sixth reason is concerned that the direction by the Appellate Tribunal is illegal in law and challenge to the Appellate Tribunal's direction to issue a forfeiture notice u/s 6(1) read with Section 6(2) of the SAFEMA, it is not open to the petitioners to challenge this direction because the petitioners have in fact relied upon this order of the Appellate Tribunal.

10. In so far as the seventh reason is concerned that the petitioners the issuing of notice is mala fide and without jurisdiction and the reason to belief are based upon guess work cannot be sustained as no malafides are detailed in the writ petition. Considering the plea of the petitioners in the pending Civil Writ Petition Nos. 5444 of 2000; 5373 of 2001 & 5293 of 2001 that the lands in question in those petitions belonged to the petitioners in the present group of writ petitions, the show cause notices, impugned in this group of petitions prima facie cannot be said to be based upon guess work.

11. Accordingly, I am of the view that the petitioners have sought to approach this Court prematurely and the appropriate cause for the petitioners is to show cause in reply to the Notice dated 31st of October, 2001, issued u/s 6(1) read with Section 6(2) of the SAFEMA and in this view of the matter the writ petitions are dismissed as premature with no orders as to costs.