
(2009) 08 KL CK 0084

High Court Of Kerala

Case No: WA. No. 1617 of 2009

K. Indira Amma

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Aug. 21, 2009

Acts Referred:

Constitution of India, 1950 – Article 226#Smugglers and Foreign Exchange Manipulators
(Forfeiture of Property) Act, 1976 – Section 10, 11, 2(2), 6, 6(1)

Citation: (2009) 08 KL CK 0084

Hon'ble Judges: S.R. Bannurmath, C.J; A.K. Basheer, J

Bench: Division Bench

Advocate: Pirappancode V.S. Sudhir, for the Appellant; No Appearance, for the Respondent

Final Decision: Dismissed

Judgement

S.R. Bannurmath, C.J.

Since the questions raised in both these writ appeals are common and similar transactions in respect of a person

detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 hereinafter referred to as

"COFEPOSA Act" are involved, both the matters are taken up together for consideration and being disposed of by this common judgment. The

brief facts that are necessary for our consideration are as follows:

2. One Ayyappan Achary was detained under the provisions of the COFEPOSA Act. During the enquiry as it was found that three of the

properties are possibly out of the gains of the illegal acts of the said detenu, especially as some of the properties were found to be owned in the

name of S. Muthuswamy, the brother of the detenu, and as per the definition of Section 2(2)(c), he is a person within the ambit of the provisions of

Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter referred to as "SAFEM Act", enquiry was held by

issuance of notice u/s 6 of the SAFEM Act. The competent authority as well as the Appellate Tribunal after giving opportunity to the said S.

Muthuswamy and on detailed enquiry held that S. Muthuswamy has failed to prove his independent sources of income to acquire the properties

and as he is a relative of the detenu, it is deemed that the properties belonged to the detenu and as such proceedings u/s 11 of the SAFEM Act

were initiated. It is these orders which have been challenged by the two appellants independently who claim that they have purchased these

properties from S. Muthuswamy and since they are bona fide purchasers these properties cannot be the subject matter of SAFEMA proceedings.

3. The learned Single Judge considering the basic requirement for invoking Section 11 of the SAFEM Act and finding that admittedly the

properties were purchased by the appellants after issuance of notice u/s 6(1) of the SAFEM Act, held that there is no illegality whatsoever in the

action taken by the respondent authorities. Aggrieved by the same the present writ appeals are filed.

4. Relying upon the provision regarding applicability of the SAFEM Act u/s 2(2)(e) and taking us through the provisions of Sections 6, 7 and 11 of

the said Act and placing reliance upon the decisions in the case of Attorney General for India and Others Vs. Amratlal Prajivandas and Others, ,

Dwarka Prasad Agarwal (D) by LRs. and Another Vs. B.D. Agarwal and Others, , Abdulla v. Competent Authority 2007 (1) KLT 956 and

Aslam Mohd. Merchant Vs. Competent Authority and Others, , it is vehemently contended that since the appellants are transferees in good faith

and in the absence of contra indicating materials the learned Single Judge was in error in affirming the illegal order of the authorities and as such

Ext.R2(d) order dated 3.10.2001 is illegal.

5. Having heard both the learned counsels at length and perusing the provisions of the Act and the object behind the same, it is to be noted that

SAFEM Act is enacted noticing the fact that smuggling activities and foreign exchange manipulations are having a deleterious effect on the national

economy and persons engaged in such malpractices have been augmenting their ill-gotten gains and in most of the cases persons have been

holding properties acquired through ill-gotten gains in the names of their relatives, associates and confidants and as such it is necessary not only to

prevent such activities, but to penalize the persons holding such properties. Section 11 of the SAFEM Act states that where after the issuance of

notice u/s 6 or u/s 10 of the SAFEM Act, any property referred to in the said notice is transferred by any mode whatsoever, such transfer shall, for

the purpose of the proceedings under the SAFEM Act, be ignored if such property is subsequently forfeited to the Central Government u/s 7 of

the SAFEM Act, then the transfer of such property shall be deemed to be null and void. Admittedly, in the present case notice u/s 6(1) of the

SAFEM Act was issued to S. Muthuswamy on 7.3.1980 and the appellants herein have purchased their respective properties admittedly after the

issuance of notice. In that case the provisions of Section 11 of the SAFEM Act are straightaway attracted.

6. But what is vehemently contended is that before taking any recourse to the proceedings u/s 11 of the SAFEM Act as the appellants had no

opportunity to represent themselves and put forth their case, the only remedy available to them is under Article 226 of the Constitution of India to

approach this Court and though it was open to the learned Single Judge to consider the grievances of the appellants, and on his failure to consider

the same, the impugned judgment of the learned Single Judge requires reconsideration.

7. It is also contended that the notice to the predecessor/vendor S. Muthuswamy was defective and illegal and as such no proceedings initiated

thereafter can be sustained under law. As already noted, the learned counsels have relied upon various pronouncements noted above.

8. In our view, it is not necessary to go into the dicta laid down in those decisions for the simple reason that the vendor of the appellants has

challenged the initiation of action against him before the competent authority and having failed there, challenged the same before the appellate

authority also. Both the authorities have considered the matter in depth and have come to a finding that the properties held by the said S.

Muthuswamy was in fact the property of the detenu purchased out of the ill-gotten money by violation of the SAFEM Act. These orders of the

competent authority and the appellate authority have become final. The ultimate result is that the properties in question held by S. Muthuswamy

stood confiscated as they belonged to the detenu. Once the title of S. Muthuswamy becomes illegal, the subsequent purchasers cannot claim any

better right than their vendor. Nor it is open for the subsequent purchasers to challenge the proceedings initiated against S. Muthuswamy or the

order passed therein even if they may be the affected persons as their title itself emanates from a void transaction. In that view of the matter and

admittedly as the sale in favour of the appellants is after the issuance of the notice u/s 6(1) of the SAFEM Act, the same attracts the consequence

u/s 11 of the SAFEM Act. In our view, the learned Single Judge has considered all these aspects and even otherwise after reconsideration of the

entire matter from the angle of the appellants themselves, we do not find that there is any merit in the case of the appellants. Hence we concur with

the finding of the learned Single Judge and dismiss the writ appeals as devoid of merits.