

(1990) 11 CAL CK 0039

Calcutta High Court

Case No: None

RAM SHAH

APPELLANT

Vs

COMPETENT AUTHORITY,
CALCUTTA.

RESPONDENT

Date of Decision: Nov. 16, 1990

Acts Referred:

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

Citation: (1991) 188 ITR 118

Judgement

@JUDGMENTTAG-ORDER

Ram Shah, the appellant, was detained by the Government of Bihar, by its order dated October 4, 1980, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. His detention was neither revoked nor set aside by any Competent Authority. The Competent Authority under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereafter the "Act), issued a notice dated February 5, 1990, u/s 6(1) of the Act, with respect to the following items of properties :

Immovable properties :

Landed property at village : Rajwahi District-Gopalganj, Bihar

Khata Bigha	Khasra Katha	No. Dahur	Area	Estimated value Rs. 10,000
127	202	0	2	14

885	0	3	7
1142	0	2	16
788	0	0	5
Total	0	9	42 ^{1/2}

Rs.

(ii) Land purchased in the name of his wife, Smt. Tetari Devi, as per deed No.15002 dated September 11, 1978. 10,000

(iii) House property constructed on the land in the name of wife, Smt. Tetari Devi 60,000

Movable propertie :

(i) Cow 2,000

(ii) Retail kirana shop at Sariyan, Gopalganj, in the name of his son, Shri Daya Shankar Prasad, in which capital invested by the affected person stood at Rs. 5,000. Therefore, value of the closing stock, etc. 10,000

After completion of investigation and trial, and the Competent Authority, vide order dated May 18, 1990, ordered the forfeiture of all the items. It is against this order that the present appeal is directed.

Item No. 1 is land bearing Khata No. 127 and Khasra Nos. 202, 885, 1142 and 788, situated in village Rajwahl, Dist. Gopalganj, Bihar, the value estimated being at Rs. 10,000. It was stated during arguments that in place of Khasra No. 885, the correct No. is 385. The case of the appellant before the Competent Authority was that he did not acquire this land himself and that it came to him by way of inheritance from his ancestors. It is admitted that this land does not stand in the name of the appellant in the revenue records. The learned Competent Authority has observed that the appellant has failed to lead evidence to establish that the party in whose name the land stands in the revenue records was his forefather. In the absence of such proof, the learned Competent Authority has held that this land is the self-acquired property of the appellant and he has failed to prove that he had sufficient funds to acquire it. The approach of the learned Competent Authority is erroneous. As stated earlier, this land is not at present shown in the name of the appellant in the revenue records. The party in whose name the land stands in the revenue records is either

the forefather of the appellant, then it is understood that it came into the hands of the appellant by way of inheritance. In the event the recorded owner is a stranger to the appellant, the Competent authority has no jurisdiction to forfeit the same in the hands of the appellant as it belongs to a stranger.

Now remains the admission of the appellant that this land belongs to him. With this admission he has also added that he got it from his forefather. Under the circumstances, the statement of the appellant on this point has either to be believed or not to be believed as a whole. This apart, the learned counsel for the appellant stated during arguments that the appellant was not allowed time to adduce evidence to prove that the party in whose name the land stands in the revenue records is the forefather of the appellant. In any case, the finding of the Competent Authority on this item cannot be sustained.

Items Nos. 2 and 3 are the land and house constructed upon it. The value of the land is assessed at Rs. 10,000 purchased in the name of the wife of the appellant, vide sale deed No. 15002 dated September 11, 1978. The house constructed thereon, estimated at Rs. 60,000, also stands in the name of the wife of the appellant. According to the learned Competent Authority, the lands has been purchased by the appellant in the name of his wife and further, the house had also been constructed by him in her name. The finding of the learned Competent Authority is that irrespective of the fact that the land and house stand in the name of the wife of the appellant, the latter should be taken to be the real owner because it had been financed by him. This finding of the learned Competent Authority cannot be upheld for the reason that the wife of the appellant, who is the ostensible owner of these two items and was allegedly holding them on behalf of her husband, was not issued a notice u/s 6(2) of the Act.

Section 6(2) of the Act reads :

"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."

It is clear from the text and tenor of section 6(2) reproduced above that it was obligatory on the Competent Authority to have served a copy of the notice issued to the appellant u/s 6(1) of his wife as well before recording an effective finding binding on her. As it was not done, the finding of the learned Competent Authority on this point cannot be upheld.

The movable properties consist of two items, namely, a cow worth Rs. 2,000 and the retail kirana business being carried on at Sariyan, Gopalganj, in the name of Daya Shankar Prasad, son of the appellant. The value of the closing stock, etc., of the business has been assessed at Rs. 10,000.

So far as the cow is concerned, no firm finding has been recorded if it belonged to the appellant. The case of the appellant is that his wife is keeping some cows and doing the business of sale of milk. This plea has not been negatived. The impugned order is rather silent regarding the ownership of the cow and an abrupt order of its forfeiture against the appellant is, therefore, not justified.

The second item of movable property is that of the retail kirana business. It is admittedly being done by Daya Shankar Prasad, son of the appellant. According to the learned Competent Authority, this business is being carried on by Daya Shankar Prasad on behalf of his father. In the face of this presumption or finding it was obligatory for the learned Competent Authority to have served a copy of the notice issued to the appellant u/s 6(1) to Daya Shankar Prasad as well as provided u/s 6(2) of the Act. It was not done. The finding of the learned Competent Authority in relation to this item against the appellant is bad in law on this ground and cannot be sustained.

In the result, the appeal is allowed, the impugned order set aside and the case remanded to the Competent Authority for deciding it afresh after following the procedure according to law as indicated above.