

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11-3-1994.

CORAM:

The Hon'ble Mr.K.A.Swami, Chief Justice

and

The Hon'ble Mr. Justice Somasundaram

W.P.No.4824 of 1978

NG Ganeshmal Bhimaji

.. Petitioner

Vs.

1. The Appellate Tribunal for
Forfeited Property, New Delhi
2. The Competent Authority,
SAFEMFOPA 13/76, Madras.2.

.. Respondents.

For petitioner : Mr. A.Thiagarajan

For respondents : Mr. S.Veeraraghavan, ACGSC

(The ORDER of the Court was delivered by
The Hon'ble the Chief Justice.

In this petition under Article 226 of the Constitution of India, the petitioner has sought for quashing the order dated 28.11.1977 passed by the Competent authority under Section 7 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, hereinafter referred to as 'the Act', and also the order dated 14.7.1978 passed by the

Appellate Tribunal for Forfeited Property in F.P.A.
No.147/77-78.

2. The Petitioner is the brother of the detenu by name Lakshmi Chand: therefore, he falls within the ambit of section 2(2)(c) of the Act. Hence, a notice under Section 6(1) of the Act was issued to him to show cause as to why the assets mentioned therein, viz.

1. Advance to Sha Manmal Lakshnichand	Rs.5,192/00
2. Advance to Mahalakshmi Steel House	18,245/33
3. Advance to M.L.N.Tajudeen	25,888/80
4. Advance to Sanghvi Electricals	4,188/00
5. Cash to hand	1,166/00,

should not be forfeited. Pursuant to the notice, the petitioner appeared and filed his objections. The Competent Authority held an enquiry and ultimately by Order dated 28.11.1977 found that out of the five assets mentioned in the notice, only the following three were in existence.

1. Advance to Sha Manmal Lakshnichand	Rs. 998/00
2. Advance to Sanghvi Electricals	Rs. 188/00
3. Advance to M.K.M.Tajudeen	Rs.25,888/80

It also found that the petitioner failed to prove that these assets were acquired by lawful sources of income. Accordingly the aforesaid assets were directed to be

forfeited. Aggrieved by the order of forfeiture passed, by the Competent Authority the petitioner preferred an appeal before the first respondent in F.P.A.No.147/77-78. The First respondent/appellate Tribunal, on reconsideration of the entire evidence on record, agreed with the findings recorded by the competent authority and dismissed the appeal.

3. It is contended before us that when the Income Tax Authority has accepted the returns filed by the petitioner for the years 1968-69 to 1976-77 and as per those returns, the assets in question were acquired by lawful sources, as they were shown in the returns, it is not all open to the competent authority or the Tribunal, exercising powers under the Act, to go behind the assessment orders or to refuse to give credence to those assessment orders and hold that the assets in question are not proved to have been acquired by lawful sources. Apparently, the contention appears to be very attractive but the Act contains a specific provision in this regard. Section 21 of the Act specifically states, "No finding of any officer or Authority under any other law shall be conclusive for the purposes of any proceedings under this Act." Section 24 of the Act further provides, "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force." A reading of the provisions contained in

sections 21 and 24 of the Act makes it clear that it is open to the Competent Authority and the Tribunal to go behind the orders of assessment passed under the Income-tax Act and find out whether the income shown in the returns was derived from lawful means or sources. It is also relevant to notice that the Income-tax authorities did not go into the source of income and they would be only assessing the return as submitted or, in the event, without passing an order of assessment, they can have their own investigation done and may not accept the returns and make a best judgment assessment for an enhanced sum. Further, if the assessment orders are held to be binding on the Competent Authority and the Tribunal, exercising powers under the Act, the very object of the Act will be defeated and it would not be possible to prevent smuggling activities and foreign exchange manipulations, which have a deliterious effect on the national economy and, therefore it is necessary to deprive persons engaged in such manipulations of their ill-gotten gains.

4. On going through the order of the Competent Authority and the Tribunal, we are satisfied that the findings recorded by both the Authorities are well-founded on the evidence on record. We see no ground to interfere and the writ petition is dismissed. No costs

Index: yes/no

(K.A. Swami, C.J.) (T.S., J.)

11th August 1994

*True Copy
Somasundaram*