

Madras High Court

Mohammed Muflih vs The Competent Authority on 13 August, 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2013

Coram

The Honourable Mr.Justice S.NAGAMUTHU

W.P. Nos. 16846 of 1994

and 16571 of 1995

and

W.M.P.Nos. 25006 of 1995

and

W.M.P.No.26324 of 1995

Mohammed Muflih

.. Petitioner in W.P.No.16846/19

Rasheeda Banu

.. Petitioner in W.P.No.16571/19

-vs-

1.The Competent Authority
Smugglers & Foreign Exchange
Manipulators (Forfeiture of Property) Act
Mount Road
Madras-600 002.

2.The Appellate Tribunal for
Forfeited Property
Room No.252, Vigyan Bhavan Annexe
Moulana Azad Road
New Delhi.

3.Union of India
Represented by the Secretary
Ministry of Finance
New Delhi.

.. Respondents in both W.Ps.

Writ Petition in W.P.No. 16846 of 1994 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the orders of the first respondent in OCA No.111/MDS/76, dated

05.03.1977 and confirmed in Appeal by order in FPA No.13/77-78, dated 14.07.1978, of the second respondent, quash the same.

Writ Petition in W.P.No. 16571 of 1995 filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the orders of the first respondent in OCA No.111/MDS/76, dated 05.03.1977 and confirmed in appeal by order in FPA No.13/77-78, dated 14.07.1978, of the second respondent and the further proceedings of the first respondent in OCA/MDS/111/76, dated 13.10.1995, and quash the same.

For Petitioners : Mrs.Anita Sumanth in both WPs.

For Respondents : Mr.Haja Mohideen Gisthi
in both WPs.

COMMON ORDER

One Mr.T.S.A.Omer Farook was detained under Section 3(1) of the Maintenance of Internal Security Act, 1971, on 26.10.1974. The petitioner in W.P.No.16571 of 1995 is the wife of Mr.T.S.A.Omer Farook and the petitioner in W.P.No. 16846 of 1994 is the son of Mr.T.S.A.Omer Farook. His detention was later on converted as a detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), with effect from 20.12.1974.

2. Mr.T.S.A.Omer Farook owned an immovable property, viz., a house bearing No.4, Vaniar Street, Madras-1. In the said house, he had owned a half share, worth Rs.95,116/-, as per the market value in the year 1973. Apart from that, a sum of Rs.23,150/- was due to him from one Mr.T.S.Hameed Abdul Kader; another sum of Rs.8,500/- was due to him from one Mr.T.S.S.Abdul Majeed; a sum of Rs.10,483/- was due to him towards rent collection commission business; and there was a cash balance to the tune of Rs.3,500/-.

3. Alleging that the above stated properties were illegally acquired properties of Mr.T.S.A.Omer Farook, the competent authority under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as, "The Act"), issued a notice under Section 6(1) of the Act, calling upon him to explain, as to why the said properties should not be forfeited in favour of the Government under Section 7 of the Act. However, along with the said notice, the reasons recorded by the competent authority for issuance of notice under Section 6(1) of the Act were not furnished. Admittedly, at the time, when the said notice was served on him, Mr.T.S.A.Omer Farook, was in detention.

4. On receipt of the said notice, Mr.T.S.A.Omer Farook, authorised one Mr.T.Kothandaraman, B.Com., B.L., Advocate, having his office at No.27, V.O.C.Street, K.Pudur, Madurai-7, to appear on his behalf. Vakalat was attested by the Jailer, Central Jail, Madras. Mr.T.S.A.Omer Farook wrote a letter to the competent authority on 15.06.1976 stating that he had engaged Mr.T.Kothandaraman and he had also entrusted all the required documents and information to him. He had also requested the authorities to grant him enough time and allow him for the said purpose. Accordingly,

Mr.T.Kothandaraman appeared before the competent authority on the hearing dates and from the records, it is also seen that the matter was adjourned for few hearings at the instance of Mr.T.Kothandaraman. After affording reasonable opportunity of being heard and after having considered the materials placed by Mr.T.S.A.Omer Farook, through his counsel, the competent authority, by his proceedings in OCA No.111/MDS/76, dated 05.03.1977, ordered under Section 7 of the Act, forfeiting all the properties.

5. Mr.T.S.A.Omer Farook was later on released from detention on 26.03.1977. He filed a Writ Petition in W.P.No.2225 of 1977, challenging some of the provisions of the Act and also the order of detention. In that Writ Petition, an order of stay was granted by this Court on 27.07.1977, staying the operation of the order, dated 05.03.1977 made in OCA No.111/MDS/76.

6. In the meanwhile, Mr.T.S.A.Omer Farook, filed an appeal before the Appellate Tribunal For Forfeited Property in F.P.A.No. 13/77-78, against the forfeiture order. The said appeal could not be disposed of, because of the interim order passed by this Court in W.P.No.2225 of 1977. On 23.12.1977, this Court passed yet another interim order, modifying the earlier interim order. As per the modified order, the Appellate Tribunal was permitted to hear the appeal and dispose of the same. However, it was further directed that the said order shall not be implemented, until a final order was made in W.P.No.2225 of 1977.

7. In pursuance of the said order, the Appellate Tribunal heard the learned counsel for the appellant, perused the records and finally passed an order on 14.07.1978, by which, it had confirmed forfeiture of four properties, viz., (1) 1/2 share in the house property bearing No.4, Vaniar Street, Madras-1.

(2)	Amount due from T.S.Hameed Abdul Kader	□	Rs.23,150/-
(3)	Amount due from T.S.S.Abdul Majeed	□	Rs. 8,500/-
(4)	All assets of the rent collection commission business including the credit balance	□	Rs.10,483/-

The Tribunal, however, set aside the order of forfeiture in respect of the following pro

(1)	Cash Balance	□	Rs. 3,500/-
(2)	Canara Bank, Madras	□	Balance to his credit.

8. Challenging the said order of the Appellate Tribunal, Mr.T.S.A.Omer Farook, filed yet another Writ Petition in W.P.No. 283 of 1979. By order dated 29.06.1979, this Court dismissed the said Writ Petition on the ground that as per the interim order made in W.P.No. 2225 of 1977, the order of Appellate Tribunal could not be implemented. The learned Single Judge further held that in the event, the provisions of the Act were held to be unconstitutional, then, the order of the Appellate

Tribunal would become non est in the eye in law. Recording these reasons, the learned Single Judge of this Court dismissed the Writ Petition.

9. As against the same, Mr.T.S.A.Omer Farook, filed an appeal in W.A.No. 197 of 1981. A Division Bench of this Court, by order dated 30.08.1988, dismissed the Writ Appeal. Thus, Mr.T.S.A.Omer Farook, was waiting for the final outcome in W.P.No.2225 of 1977. While so, unfortunately, Mr.T.S.A.Omer Farook, died on 08.02.1990.

10. In the mean while, on 15.09.1994, this Court dismissed W.P.No. 2225 of 1977. On such dismissal, the order of the Appellate Tribunal, dated 14.07.1978 made in F.P.A.No. 13/77-78, has become operative. It is at this stage, the petitioners herein, being the legal heirs, have come up with these two Writ Petitions, challenging the order of the Appellate Tribunal, dated 14.07.1978. That is how, these two Writ Petitions are before me for disposal.

11. I have heard Mrs.Anitha Sumanth, the learned counsel appearing for the petitioners and Mr.Haja Mohideen Gisthi, the learned counsel appearing for the respondents and I have also perused the records carefully.

12. Though, several grounds have been raised in these Writ Petitions, Mrs.Anitha Sumanth, the learned counsel for the petitioners would focus her argument mainly on three grounds. The first and foremost ground raised by the learned counsel for the petitioners is that the notice under Section 6(1) of the Act, is defective, as the same does not satisfy the legal requirements enshrined in Section 6(1) of the Act. According to her, the reasons recorded by the competent authority for issuance of notice under Section 6(1) of the Act, were not furnished. At the same time, she would be fair enough to submit to the Court that it is enough if the reasons recorded are produced along with an annexure by way of affidavit to this Court. That is what the respondents have done by way of filing an additional counter affidavit, dated 16.11.2010. Along with the same, the respondents have also produced the reasons recorded by the competent authority for the issuance of notice under Section 6(1) of the Act. Thus, so far as furnishing of a copy of the reasons recorded by the competent authority is concerned, I am of the view that the respondent has complied with the same as per the law laid down by the Hon^{ble} Supreme Court in P.P.Abdulla and another vs. Competent Authority and others, reported in (2007) 2 Supreme Court Cases 510.

13. Now, after referring to the reasons recorded by the competent authority, the learned counsel for the petitioners would submit that the reasons recorded by the competent authority do not satisfy the legal requirements of Section 6(1) of the Act. According to her, the submissions made by way of explanation by Mr.T.S.A.Omer Farook, prior to the issuance of notice under Section 6(1) of the Act, were not considered properly. In order to substantiate the said contention, the learned counsel, has taken me through the reasons recorded by the competent authority. But, I find no substance in the said argument at all.

14. A cursory perusal of the reasons recorded by the competent authority would go to show that he has given detailed reasons, as to how he was satisfied that the properties were all illegally acquired properties. It is not the law that even before issuance of notice under Section 6(1) of the Act, the

competent authority is required to go into the minute details of the submissions of the detenu and adjudicate upon the disputed facts. In my considered opinion, it is enough that if the competent authority is subjectively satisfied by going through the materials placed before him, including the submissions made by the detenu to the effect that the properties were all illegally acquired properties. In this case, in my considered opinion, the competent authority has given detailed reasons, as to how he was satisfied that the properties were all illegally acquired properties in terms of the provisions of the Act. Thus, I do not find any infirmity at all in the reasons recorded by the competent authority before the issuance of notice under Section 6(1) of the Act. It is, of course, settled law that recording of reasons, that too, the reasons, which gave raise to the satisfaction on the part of the competent authority alone gives jurisdiction to the competent authority to proceed further. In this case, the competent authority has scrupulously complied with the requirements of Section 6(1) of the Act and therefore, I hold that the first objection raised by the learned counsel for the petitioners assailing the notice issued under Section 6(1) of the Act, deserves only to be rejected.

15. Nextly, the learned counsel for the petitioners would contend that there is a glaring violation of principles of natural justice. According to her, as per Section 7 of the Act, before passing a final order of forfeiture under Section 7 of the Act, the competent authority is required to afford reasonable opportunity of being heard to the owner of the property. In this case, according to the learned counsel, such opportunity of being heard was not at all afforded to Mr.T.S.A.Omer Farook. She would point out that at the time when enquiry under Section 7 of the Act was held, Mr.T.S.A.Omer Farook was still in detention and therefore, he was not able to defend the case effectively. The learned counsel would further submit that in a hurried manner, the competent authority held the enquiry and without even affording sufficient opportunity, decided the matter against him.

16. But, Mr.Haja Mohideen Gisthi, the learned counsel appearing for the respondents would submit that absolutely, there is no violation of principles of natural justice. He would refer to the original file and submit that on receipt of notice under Section 6(1) of the Act, Mr.T.S.A.Omer Farook, engaged a counsel, by name, Mr.T.Kothandaraman and the said counsel appeared on several days for hearing, submitted his explanation, but, he did not produce any evidence, either oral or documentary. He would further submit that Mr.T.S.A.Omer Farook himself had written a letter to the competent authority from the prison stating that he had given all the documents and materials to his counsel and his counsel would furnish the same before the competent authority to convince the competent authority that the properties were not illegally acquired properties.

17. I have perused the original file relating to the order made under Section 7 of the Act. The said file shows that the notice under Section 6(1) of the Act, was served on Mr.T.S.A.Omer Farook, while he was in detention. While he was in prison, he engaged a counsel and vakalat was also attested by the Superintendent of Central Prison. Based on the vakalat only, the counsel appeared before the competent authority. Apart from that, Mr.T.S.A.Omer Farook himself had written a letter, dated 15.06.1976, to the competent authority, wherein, he has stated as follows:-

□ beg to inform you that I am in receipt of your notice, dated 07.06.1976, received by me here on 14.06.1976. I have now forwarded the same to my Auditor for necessary action, whose address is

Mr.T.Kothandaraman, □Laxmi Nivas□ 27, V.O.C.Street, K.Pudur, Madurai-7.

I hope my Auditor will contact you and furnish you with the required documents and information and I humbly request you that enough time may please be allowed to him for this purpose.

I fully assure that the properties mentioned in the Annexure are all legally acquired and I hope you will be convinced of my Auditor's representation on my behalf.

□□

18. Thus, it is crystal clear that Mr.T.S.A.Omer Farook was afforded sufficient opportunity. The records would further go to show that neither his counsel nor Mr.T.S.A.Omer Farook requested for any time to produce either oral or documentary evidence. The record clearly shows that his counsel argued the matter based on the evidence in his hands and he never told the authority that he had oral evidence to be let in. Similarly, he did not inform the authority or made a request seeking time to produce any documentary evidence. He argued the case and all his submissions including the materials placed before the competent authority were considered and finally, the competent authority passed the order. Thus, I find that the contention of the learned counsel for the petitioners that there is violation of principles of natural justice has got no basis and the same deserves to be rejected.

19. The learned counsel for the petitioners would submit that what is the kind of opportunity to be afforded to the owner of the property is not a mere opportunity, but, □a reasonable opportunity of being heard□ Referring to the phrase, □a reasonable opportunity of being heard□ the learned counsel would submit that the detenu himself should have been heard by the competent authority and the counsel should not have been heard. But, I find it very difficult to accept the said submission. □A reasonable opportunity of being heard□ does not mean that the party should be heard in person in all cases. It is upto the individual either to appear in person to make his submission or to make his submission, through his Power Agent or through his counsel.

20. Here, in this case, Mr.T.S.A.Omer Farook had not asked for time to appear in person from the jail. As I have already pointed out, he wrote a letter stating that his counsel would make his submissions on his behalf. In view of the said letter, it is not at all open for the petitioners, now to contend that Mr.T.S.A.Omer Farook ought to have been heard in person. Apart from that □a reasonable opportunity of being heard□ does not mean that every endeavor should be made by the competent authority to compel the owner of the property to give evidence in his defence. □A reasonable opportunity of being heard□ means □an opportunity enabling the owner of the property to defend the proposed forfeiture□ In other words, the owner of the property should be given freedom to defend his case. In this case, such freedom was given and thus, the opportunity given to Mr.T.S.A.Omer Farook by the competent authority is in no way inferior to a reasonable opportunity as of required under Section 7 of the Act. Therefore, this argument is also liable to be rejected.

21. Now, turning to the order passed by the Appellate Tribunal, the learned counsel for the petitioners would again contend that the Appellate Tribunal also did not afford sufficient

opportunity to Mr.T.S.A.Omer Farook, to prosecute the appeal. As I have already pointed out, at the time, when the appeal was heard by the Appellate Tribunal, Mr.T.S.A.Omer Farook was not at all in detention. He was released as early as on 26.03.1977. Thereafter, he filed W.P.No.2225 of 1977 and the interim order was passed by this Court in C.M.P.No. 6704 of 1977, on 23.12.1977. The final order was passed only on 14.07.1978, that is after seven months. Before the Appellate Tribunal also, Mr.T.S.A.Omer Farook had engaged an Advocate. The Advocate appeared, represented him, duly argued the case, placed all the materials and only after having considered all such materials, the Appellate Tribunal dismissed the appeal in respect of four properties. Therefore, the contention of the learned counsel that Mr.T.S.A.Omer Farook was not afforded sufficient opportunity by the Appellate Tribunal deserves to be rejected.

22. The learned counsel for the petitioners would, however, try to make a distinction between the opportunity to be given by the competent authority and the Appellate Tribunal. According to her, so far as the Appellate Tribunal is concerned, the procedure is governed by the "Smugglers and Foreign Exchange Manipulators (Appellate Tribunal for Forfeited Property) Rules, 1977". According to the learned counsel, as per the said Rules, before the appellate authority, an authorised representative of the appellant can appear.

23. Who is an authorised representative is denied in Rule 2 (iv) of the said Rules, which reads as follows:-

Definitions. In these rules, unless the context otherwise requires, --

(i) ¶

(ii) □

(iii) □

(iv) authorised representative means.--

(a) in relation to an appellant, any person being a relative of or a person, who is, or was, regularly employed by the appellant and authorised by the appellant in writing to attend before the Tribunal;
or

(b) a legal practitioner entitled to practise in any civil court in India, who is authorised by the appellant; or

(c) an accountant, being an Associate or fellow member of the Institute of Chartered Accountants of India or the Institute of Cost and Works Accountants of India, who is authorised by the appellant; or

(d) in relation to a competent authority who is a party to any proceeding before the Tribunal a standing counsel to the Government or a person duly appointed by the Government by notification in the Official Gazette as the authorised representative or any other person acting on behalf of the

person so appointed.□

24. Referring to the said Rules, the learned counsel for the petitioners would submit that so far as the Appellate Tribunal is concerned, a legal practitioner is entitled to practise, if he has been authorised by the party. But, so far as the competent authority is concerned, there is no such provision permitting an individual to engage a counsel. Thus, according to the learned counsel, the competent authority ought not to have allowed the counsel to appear.

25. The above argument, though appears to be attractive, in my considered opinion, deserves only to be rejected for more than one reason. First of all, the procedure contemplated in the said Rule is purely procedural in nature. But, opportunity of being heard to be provided under Section 7 of the Act, is substantive. For failure to follow the procedure, if the party aggrieved is able to show failure of justice on account of non-compliance of the said procedure contemplated in the Rules, then only, it can be a ground to interfere with the order. Mere failure to follow a procedure, without there being any resultant miscarriage of justice cannot be a ground to interfere with the order. Incidentally, it needs to be noted that there is no bar any where in the Act, prohibiting the detenu from engaging a counsel or his representative to appear before the authority. The law relating to agency is certainly applicable to a proceeding before the competent authority and its applicability is not excluded by the provisions of the Act. A principal can always engage an agent to do all acts on his behalf before any authority. Such agency can be created not only by a written document, but, even orally. Here in this case, the Advocate was appointed to appear on his behalf under vakalat, and therefore, he had authority to appear before the competent authority. In such view of the matter, I do not find any force in the argument of the learned counsel for the petitioners in this regard.

26. Nextly, the learned counsel for the petitioners would submit that on facts, there were no materials before the competent authority to conclude that these properties were illegally acquired. The learned counsel would further submit that in the explanation submitted before the competent authority, Mr.T.S.A.Omer Farook had explained that on 15.12.1961 and 06.01.1962, his grand-mother had gifted cash to him. Then, under the National Defence Remittance Scheme, during the year 1965-66, he had received the money. Apart from that, he was also doing broker business in transaction relating to immovable properties. He further stated that on 15.05.1965, he submitted his Income Tax Returns for the assessment years 1960-61 to 1964-65 before the Income Tax Officer, Karaikudi, wherein, he had given the details of his income during the above assessment years. Thus, according to Mr.T.S.A.Omer Farook, he had sufficient legally earned money for purchasing the house on 18.03.1966. Again, during the year 1966-67, as per the National Defence Remittance Scheme, he got some more money. Thus, according to Mr.T.S.A.Omer Farook, all the properties were only legally acquired. These explanations have been rejected by the competent authority as well as the appellate authority.

27. The learned counsel for the petitioners would submit that these explanations were not duly considered by the competent authority as well as Appellate Tribunal. According to her, the Income Tax Returns for the year 1960-61 to 1964-65, ought to have been considered, which would go to show that Mr.T.S.A.Omer Farook had sufficient income to purchase the house in the year 1966 and also the other properties.

28. But, the learned counsel for the respondents would stoutly oppose the said submissions. According to him, the explanations offered by Mr.T.S.A.Omer Farook, were all considered in detail. But, according to the competent authority, there was no evidence to show that his grand-mother gifted money to him. There is no other evidence in respect of the other income including the brokerage, as it was claimed by Mr.T.S.A.Omer Farook. The learned counsel would further submit that Income Tax Returns will not amount to conclusive proof of his income. For this proposition, the learned counsel would rely on Section 21 of the Act, wherein, it is stated that, "No finding of any officer or authority under any other law shall be conclusive for the purposes of any proceedings under this Act". Referring to the same, the learned counsel would contend that though, it may be true that the Income Tax Officer has accepted the income of Mr.T.S.A.Omer Farook, as per the Income Tax Returns submitted for the years 1960-61 to 1964-65, that will not go to conclusively prove the income of Mr.T.S.A.Omer Farook.

29. The learned counsel for the respondents would further submit that there is a presumption under Section 8 of the Act. According to the said provision, the learned counsel would contend, the burden of proving that any property specified in the notice under Section 6(1) of the Act, is not illegally acquired property, lies on the person affected. In this case, according to the learned counsel, no evidence whatsoever was let in to rebut the said presumption and also to prove that the properties were not illegally acquired properties of Mr.T.S.A.Omer Farook . Thus, according to the learned counsel for the respondents, these Writ Petitions deserve to be dismissed.

30. I have considered the above submissions.

31. As rightly contended by the learned counsel for the respondents, the "burden of proof" that the properties were not illegally acquired properties was heavily upon Mr.T.S.A.Omer Farook. For better understanding let me extract Section 8 of the Act, which speaks of "Burden of proof" which reads as follows:-

"8. Burden of proof. In any proceedings under this Act, the burden of proving that any property specified in the notice served under section 6 is not illegally acquired property shall be on the person affected."

32. A perusal of the above provision would go to show that it is the burden of the owner of the property to prove that the properties were not illegally acquired properties. In order to discharge the said burden, Mr.T.S.A.Omer Farook ought to have let in either oral or documentary evidence. Neither he did. According to him, on 15.12.1961 and 06.01.1962, his mother had gifted money to him. It was absolutely necessary for Mr.T.S.A.Omer Farook to prove the same. But, no oral evidence was let in by Mr.T.S.A.Omer Farook, to prove the said fact. Neither did he give evidence about the gift nor did his grand-mother give any evidence. No other person, who had personal knowledge of the gift also gave evidence. No document was also produced. Thus, the fact alleged by Mr.T.S.A.Omer Farook that his grand-mother gifted money on two occasions has not been proved either by means of documentary evidence or by means of oral evidence.

33. The learned counsel for the petitioners would submit that Mr.T.S.A.Omer Farook had produced documents to show that his grand-mother had agricultural income. It may be true that his grand-mother had agricultural income and also income through other sources. But, that is not crucial. What is crucial is, as to whether Mr.T.S.A.Omer Farook's grand-mother gifted money to him or not. Unless this fact is proved, it cannot be held that Mr.T.S.A.Omer Farook had discharged his burden as required under Section 8 of the Act. Similarly, in respect of the income derived by way of commission in his business also, Mr.T.S.A.Omer Farook had not let in any evidence.

34. The learned counsel for the petitioners would however submit that the details of the persons, who paid commission, had been given in the explanation. The learned counsel would further submit that the transactions between those persons and others, in which, Mr.T.S.A.Omer Farook acted as broker and received his commission had all been given in detail in the explanation. It is true that these facts have been alleged in the explanation. But, mere allegation is not enough. What is required of under Sections 7 and 8 of the Act, is "proof". None of the persons, from whom, Mr.T.S.A.Omer Farook allegedly had received money by way of commission has been examined. Neither any document was produced to prove the same nor did Mr.T.S.A.Omer Farook, give evidence in respect of the commission received. Mere statement before the competent authority that he received commission from various named persons would not go to discharge his burden, as is required under Section 8 of the Act. Thus, Mr.T.S.A.Omer Farook had not proved that he had income derived from the commission business. Similarly, the other income have also not been proved. In my considered opinion, Mr.T.S.A.Omer Farook had failed to discharge his burden as required under Section 8 of the Act, to show that these properties were not illegally acquired properties.

35. A perusal of the order of the competent authority as well as the Appellate Tribunal would go to show that they have dealt with all the above aspects and have rightly come to the conclusion that these properties were all illegally acquired properties. Thus, in my considered opinion, there is no infirmity at all in the impugned order of forfeiture.

36. But, the learned counsel for the petitioners would submit that the competent authority ought to have ordered for enquiry or investigation by an officer of the Income Tax Department. The learned counsel would further submit that in respect of other half share in the first item of property, which is the subject matter of these Writ Petitions, yet another brother of Mr.T.S.A.Omer Farook filed a Writ Petition, challenging the forfeiture order made under Section 7 of the Act. In the said Writ Petition, a learned Single Judge of this Court had directed the competent authority to appoint an Income Tax Department Officer to hold an enquiry under Section 18 of the Act and then, to pass appropriate order under Section 7 of the Act. Referring to the same, the learned counsel would submit that in the case on hand also, the competent authority ought to have appointed an officer of the Income Tax Department to hold necessary enquiry or investigation as provided in Section 18 of the Act.

37. But, the learned counsel appearing for the respondents would submit that there was no need at all to order for such enquiry, because, the materials available before the competent authority clearly had gone to prove that the properties were all illegally acquired properties.

38. Before going into the further details of the rival contentions, let us have a quick glance through Section 18 of the Act, which reads as follows:-

18. Power of competent authority to require certain officers to exercise certain powers. (1) For the purposes of any proceedings under this Act or the initiation of any such proceedings, the competent authority shall have power to cause to be conducted any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account or any other relevant matters.

(2) For the purposes referred to in sub-section (1), the competent authority may, having regard to the nature of the inquiry, investigation or survey, require an officer of the Income-tax Department to conduct or cause to be conducted such inquiry, investigation or survey.

(3) Any officer of Income-tax Department who is conducting or is causing to be conducted any inquiry, investigation or survey required to be conducted under sub-section (2), may, for the purpose of such inquiry, investigation or survey, exercise any power (including the power to authorise the exercise of any power) which may be exercised by him for any purpose under the Income-tax Act, 1961 (43 of 1961), and the provisions of the said Act shall, so far as may be, apply accordingly.

39. A reading of the above provision would go to show that it is not mandatory that in all the cases such an enquiry or investigation should be ordered by the competent authority. It simply empowers the competent authority to order for such enquiry or investigation. But what are the circumstances under which such enquiry or investigation could be ordered has not been exhaustively dealt with in Section 18 of the Act. It only states that for the purposes of any proceedings under this Act such enquiry or investigation could be ordered. This would mean that for coming to a correct conclusion in the proceeding initiated under Section 6(1) of the Act, if the competent authority deems it necessary, then the competent authority may order for investigation or enquiry as provided in Section 18 of the Act. In other words, in a case where the competent authority is of the view that the materials placed before the competent authority are not sufficient to take a right decision, the competent authority may order for enquiry or investigation to collect further materials so as to come to a correct conclusion. In the instant case, neither the competent authority nor the Appellate Tribunal was of the view that the materials placed before the authority were not sufficient to come to a right conclusion. This Court, on its part, is also not convinced that such enquiry or investigation is required, because, as I have already pointed out, there are enormous materials to hold that the properties were illegally acquired properties.

40. Above all, as I have already pointed out Mr.T.S.A.Omer Farook had not let in any evidence to rebut the presumption raised under Section 8 of the Act. Therefore, in my considered opinion, there was no need at all for the competent authority to order for enquiry or investigation. So far as the enquiry ordered in respect of the other undivided half share in respect of the first item of the property, which is the subject matter of these writ petitions, of course, it is true that a learned Single Judge of this Court has ordered for an enquiry under Section 18 of the Act, but, it cannot be forgotten that the said half share was owned by the brother of Mr.T.S.A.Omer Farook. He was not actually the detenu. In case of a relative as defined in terms of the provision of the Act, there is a

vast difference between the property held by a detenu and the property held by a relative in terms of Section 2 of the Act. Whether an enquiry or investigation under Section 18 of the Act is required or not, is a question of fact.

41. In the given case, going by the facts and the materials placed, it is for the competent authority to decide, whether to order for investigation or enquiry. May be true that in the case relating to the brother of Mr.T.S.A.Omer Farook, this Court, on going through the facts and other materials, would have thought it fit that an enquiry under Section 18 of the Act was required. But, that cannot be blindly applied to the facts of the present case. In the present case, going by the facts and materials placed, I am of the view that no such enquiry or investigation is required under Section 18 of the Act.

42. The learned counsel for the respondents would submit that the order of the learned Single Judge in the Writ Petition filed by the brother of Mr.T.S.A.Omer Farook has been taken on appeal in W.A.No.782 of 2009 and the order of the learned Single Judge was set aside. But, the learned counsel for the petitioners would submit that the Division Bench has set aside the order of learned Single Judge on a different ground and not by disturbing the finding relating to Section 18 of the Act. In my considered opinion, I need not deal with this issue to any more extent, because, as I have already pointed out, I am fully convinced that on facts, this is not a fit case, where such an enquiry or investigation under Section 18 of the Act, is required.

43. In view of the above discussions, I hold that Mr.T.S.A.Omer Farook had failed to prove that the properties in question were not illegally acquired properties in terms of the provisions of the Act. Thus, presumption under Section 8 of the Act, remains unrebutted. There are also materials to show that these properties were illegally acquired properties. Thus, viewing from any angle, the order of the competent authority and that of the Appellate Tribunal deserve only to be confirmed, as I do not find any infirmity either factually or legally.

44. In the result, both Writ Petitions are dismissed and the order of the competent authority, dated 05.03.1977 and confirmed by the Appellate Tribunal, dated 14.07.1978, is confirmed. In view of the same, the consequential proceedings of the competent authority, dated 13.10.1995, also stands confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

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- 1.The Competent Authority Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act Mount Road Madras-600 002.
- 2.The Appellate Tribunal for Forfeited Property Room No.252, Vigyan Bhavan Annexe Moulana Azad Road New Delhi.
- 3.Union of India Represented by the Secretary Ministry of Finance New Delhi