

APPELLATE TRIBUNAL FOR FORFEITED PROPERTY  
NEW DELHI

F.P.A. No.18/MDS/96

CAMP : Bhubhaneshwar  
DATED : 12.7.1999

Sobhagmal Sowcar ... Appellant

vs.

The Competent Authority  
Chennai ... Respondent

P R E S E N T

Shri Justice J. Eswara Prasad : Chairman  
Shri Devendra Narain : Member

For the appellant : Self

For the respondent : Shri S.Dakshinamurthy  
Deputy Director

O R D E R :

The appellant was detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA). The Competent Authority, Chennai treating the appellant as covered by the provision of Sec.2(2)(b) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) issued a notice under Sec.6(1) of the Act dated 31.3.1976 to the appellant, to show-cause why the properties mentioned in the notice should not be forfeited as illegally acquired properties, after recording the reasons for the issuance of the notice.

2. In reply to the show-cause notice, the appellant sent a reply dated 6th July 1976 through his

Counsel, stating that the appellant started business in the year 1951 and had sufficient funds from the savings from his past earnings and invested in a partnership business in the year 1959, namely, Prakash & Co. and that he became a partner in M/s. Shree Textiles in the year 1962 by withdrawing from his capital account from M/s. Sobhagmal Mahavirchand. It was stated that the appellant joined as a partner in the firm, M/s. Kamadhenu, in the year 1965 by investing Rs.20,000/- which was withdrawn from the firm M/s. Shree Textiles. A house property in Waltax Road was purchased for Rs.1,15,000/- by withdrawal, partly from business and partly from loans raised from various parties. The appellant made disclosure of Rs.15,000/- under the Voluntary Disclosure Scheme of 1965 and that the appellant is in the possession of account books to prove his possessions.

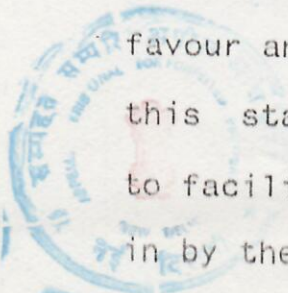
3. After perusing the documents produced by the appellant and giving a personal hearing, the Competent Authority rejected his contentions and passed the order under Sec.7(1) SAFEMA dated 8th December 1995 directing the forfeiture of two immovable properties, namely, house bearing No.225 Waltax Road, Madras and lands at Mahabalipuram and movable properties, namely, stock in trade and other assets in the business carried on under



said order, the appellant has filed this appeal.

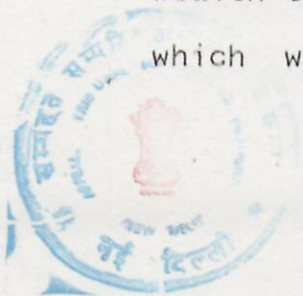
4. The appellant appeared in person and submitted his arguments. He filed a petition in M.P. No.64 of 1999 for admission of additional evidence, which was opposed by the Deputy Director appearing for the Competent Authority.

5. According to the appellant, the house property was purchased for Rs.1,15,000/- partly from withdrawal from business and partly by raising loans. The appellant did not substantiate his contention that he raised loans to the extent of Rs.75,000/- for purchasing the house property. He made a belated attempt to produce Affidavits of certain persons and the legal heirs of persons from whom he claims to have raised loans, alongwith death certificates of some of the alleged lenders and statements of account. These were never produced before the Competent Authority though the notice under Sec.6(1) was served on the appellant in the year 1976, when he had enough opportunity of producing evidence in support of his contentions. In the petition for admitting additional evidence, the appellant only states that he was under bonafide impression that the Competent Authority would give weight to the records of the Income-tax Department and thought that the issue would be decided in his favour and that he is filing the additional evidence at this stage. No additional evidence will be permitted to facilitate plugging of loopholes in the evidence let in by the parties.



6. Under Rule 14 of SAFEMA, the parties to an appeal shall not be entitled to produce additional evidence before the Tribunal, unless the Competent Authority refused to admit such evidence which ought to have been admitted, or the appellant, inspite of due diligence could not produce the same, or the Tribunal requires the documents to enable it to pronounce orders or is satisfied that there was no reasonable opportunity given to the appellant by the Competent Authority or for any other substantial cause. In the present case, the Competent Authority gave ample opportunity to the appellant to produce additional evidence on which he may rely. The appellant could have produced the evidence but failed to do so and according to him, he thought that he will succeed before the Competent Authority even without producing these documents and having failed to succeed, he prays for admitting his documents as an additional evidence nearly 25 years after the commencement of the proceedings. It will not be possible to place any reliance on such documents which could be prepared for the purpose of the appeal. None of the alleged Income-tax assessment orders of the supposed lenders are produced. We, therefore, reject this petition and dismiss the M.P. No.64 of 1999.

7. It is the contention of the appellant that he declared the house property both in the Income-tax and Wealth-tax returns for the assessment years 1973-74 which were accepted by the Income-tax authorities and



the assessment orders were passed. It is to be noted that the said orders were passed without verifying the credit worthiness of the persons from whom the loans have been claimed to be obtained. Even the details like the addresses of persons from whom confirmatory letters have been furnished were not mentioned before the Competent Authority. The original books of account alongwith Wealth-tax returns were not produced. The books of account were examined by the Competent Authority and were rightly held to be unreliable due to several over-writings and interpolations in several entries, indicating that the entries have not been made in the normal course of business. Two sets of books of account were furnished and were not given any credence as the Competent Authority was convinced that they are not reliable. The books of accounts of Sobhagmal Mahavirchand did not contain any entry relating to the purchase of the house property and the borrowing of Rs.75,000/- as claimed by the appellant. The appellant introduced several cash credits in his account books totalling Rs.2,69,000/- in the names of several Marwaries, so as to cover the cost of jewellery and the house and he could not prove the genuineness of such credits, either before the ITO or before the Competent Authority. The ITO did not accept the sources of the appellant for the acquisition of the house property. We are in agreement with the Competent Authority in holding that the appellant failed to adduce evidence to show that the house property was acquired through legal

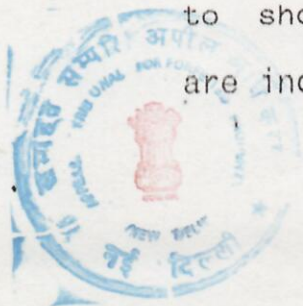
source and that it is an illegally acquired property.

8. The land at Mahabalipuram was disclosed in the Wealth-tax return for 1974-75 and is stated to have been purchased out of the appellant's income from his investment in Shree Textiles, Kamadhenu and other incomes. According to the appellant, the sources of investment in those firms is from his business capital held in the books of Sobhagmal Mahavirchand and the investment made in the said business was through his earnings from hosiery business and the accumulation of salary during his employment in N. Balchand & Co.

9. It is to be noted that the appellant made no mention of doing any hosiery business or earnings from employment in his initial reply to the notice dated 6.5.1976 issued by the Competent Authority. Later he took the plea that he cannot be expected to account for the investment after a lapse of about 40 years, forgetting the fact that he was given an opportunity to explain that the properties were acquired through legal sources, even in the year 1976 and the appellant failed to submit proper explanation and he cannot blame anyone for the same. The appellant failed to produce any evidence with regard to the claim that he had earnings from employment in Balchand & Co. and from hosiery business. The plea of the appellant that he had money with him from the sale proceeds of jewellery given by his mother was not accepted by the Income-tax authorities and no iota of evidence was produced by the appellant to show that in fact he had such money

available with him. In the absence of any evidence adduced by the appellant to show that he had enough savings for injecting capital into business, the Competent Authority was justified in holding that the appellant failed to explain the capital investment made in the firm Sobhagmal Mahavirchand and that the profits and earnings generated from the said business and invested in the firms M/s. Ranka & Co. and M/s. Shree Textiles and later in Kamadhenu, ought to be considered as having been invested out of tainted sources.

10. The Competent Authority held that the appellant produced two sets of books of account and that they were created for the purpose of the proceedings. The appellant is unable to explain why he maintained two sets of books of account. In the said circumstances, the Competent Authority was justified in holding that the amount flowing from the transfer of account in the name and style of S.M. Jewellery is liable for forfeiture, as existing at the closing of the financial year 1972-73 with accruals thereon, if any, as on the date of the issue of show-cause notice on 31.3.1976. He was also justified in directing the forfeiture of the right, title and interest of the appellant including that in capital and current account in Shree Textiles, Ranka & Co. and Kamadhenu, as illegal acquired properties. The appellant is unable to show that the findings of the Competent Authority are incorrect.



acquired properties, namely, Shree Textiles, Karabindu and other sources are also tainted and the investment made from out of such sources in acquiring the land at Mahabalipuram was also rightly held to be an illegally acquired property. We are in entire agreement with the findings of the Competent Authority and we see no reason to take a different view. The appeal is accordingly dismissed.

*S/L*

(Justice J. Eswara Prasad)  
Chairman

*S/L*

(Devendra Narain)  
Member



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BY ORDER

REGISTRAR  
Appellate Tribunal for Forfeited Property  
New Delhi