Haridas vs Competent Authority,Smugglers & Foreign Exchange Manipulators

Haridas vs Competent Authority,Smugglers & Foreign Exchange Manipulators

SooperKanoon Citation : sooperkanoon.com/1367493

Court : Kerala

Decided On : Mar-02-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/337/2012

Appellant : Haridas

Respondent : Competent Authority,Smugglers & Foreign Exchange Manipulators

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL THURSDAY, THE 2ND DAY OF MARCH 2023 / 11TH PHALGUNA, 1944 WP(C) NO. 34751 OF 2011 PETITIONERS: 1 P.VASUDEVAN VARUVILA VEEDU, POOTHAKKULAM P.O.,PARAVOOR, KOLLAM DIST 2 REMA BHAI W/O.VASUDEVAN, VARUVILA VEEDU, POOTHAKKULAM P.O.,PARAVOOR, KOLLAM DIST 3 VIJI S/O.VASUDEVAN,VARUVILA VEEDU, POOTHAKKULAM P.O.,PARAVOOR, KOLLAM DIST 4 VALSA THENGUVILA VEEDU, ELAKAMON P.O.,AYROOR VILLAGE,VARKALA BY

ADVS.SRI.P.A.AHAMMED SRI.THOUFEEK AHAMED RESPONDENTS: 1 COMPETENT AUTHORITY SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS(FORFEITURE OF PROPERTY)UTSAV, NO.64/1,G.N.CHETTY ROAD, T.NAGAR, CHENNAI-6000017 2 DISTRICT COLLECTOR THIRUVANANTHAPURAM-695001 BY ADVS.SRI.P.PARAMESWARAN NAIR,ASG OF INDIA ASSISTANT SOLICITOR GENERAL THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL THURSDAY, THE 2ND DAY OF MARCH 2023 / 11TH PHALGUNA, 1944 WP(C) NO. 34985 OF 2011 PETITIONER: KUMUDA BHAI W/O.LATE RAMAN,VIJAYAMANDIRAM,ELAKAMON P.O,AYROOR P.O,VARKALA BY ADVS. SRI.P.A.AHAMMED SRI.THOUFEEK AHAMED RESPONDENTS: 1 COMPETENT AUTHORITY, SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS(FORFEITURE OF PROPERTY),UTSAV,NO.64/1,G.N.CHETTY ROAD,T.NAGAR,CHENNAI 600 017

2 DISTRICT COLLECTOR THIRUVANANTHAPURAM 695 005 BY ADVS. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA ASSISTANT SOLICITOR GENERAL SUVIN R MENON THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL THURSDAY, THE 2ND DAY OF MARCH 2023 / 11TH PHALGUNA, 1944 WP(C) NO. 337 OF 2012 PETITIONER: HARIDAS AGED 58 YEARS S/O.VELU, CLAVANA VEEDU, AYROOR VILLAGE,ELAKAMON

P.O., VARKALA. BY ADVS. SRI.P.A.AHAMMED SRI.THOUFEEK AHAMED RESPONDENTS: 1 COMPETENT AUTHORITY,SMUGGLERS & FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY), UTSAV, NO.64/1, G.N CHETTY ROAD,T.NAGAR, CHENNAI-600 017. 2 THE DISTRICT COLLECTOR THRIUVANANTHAPURAM. PIN-695 001 BY ADVS. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA ASSISTANT SOLICITOR GENERAL SRI.P.VIJAYAKUMAR S.MANU (DSGI) THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.03.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of March, 2023 This order of mine shall dispose of three writ petitions bearing Nos.34751 of 2011, 34985 of 2011 and 337 of

2012. In all these writ petitions, petitioners have

purchased property from erstwhile owner in 1983, 1992 and 1984. The question of law which arises for adjudication in these cases is whether the petitioners are bonafide purchasers of the properties from the erstwhile owner who had already been detained under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and in view of the notice issued under Section 6 of the Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act 1976, any sale made thereafter would be null and void or not.

2. The property at the hands of all the petitioners

were earlier owned by Smt.Thankamma and her husband Shri.O.Raghavan. Smt.Thankamma suffered detention under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,

1974. Accordingly proceedings under Smugglers and

Foreign Exchange Manipulators Forfeiture of Property Act, 1976 were initiated against Smt.Thamkamma and Shri.O.Raghavan for forfeiture of the illegally acquired properties held by them. During the aforementioned proceedings both Smt.Thankamma and Raghavan expired and Shri.R.S.Kumar and Smt.Shyamakuary, son and daughter were impleaded. Since the properties were alleged to have been purchased from the persons of crime, the they were attached by issuing a notice of forfeiture dated 19/20.06.1978.

2. After due process of law, an order under Section

7(1) of SAFEM (FOP) A in OCA/MDS/1520/78 dated 31.03.1997 was passed by the Competent Authority, forfeiting the illegally acquired properties of Raghavan to the Government of India free from all encumbrances. The aforementioned order was assailed by the legal heirs of Raghavan before the Appellate Tribunal for forfeited

property, New Delhi. The Appellate Tribunal vide order

dated 20.05.1998 dismissed the appeal. That order was also assailed before the High Court, New Delhi, which has also been dismissed.

3. Petitioners are claiming to be bonafide purchasers

of the property on the premise that when they purchased the property after making a reasonable enquiry, there was no order of forfeiture in the records of the revenue giving suspicion or deterrence for the purchase of the property. They purchased the property with wide eyes opened as it was not encumbered.

4. Learned counsel appearing on behalf of the

petitioners submitted that the order of the Government of India dated 09.08.2011 reflecting the property to be escheated or in the ownership of the Government for free of the encumbrance is bad in law as the act is came in to force only in 1976 and there was no forfeiture notice for the sake of the repetition except for notice under Section 6, thus the provisions of Section 11 of the Act, declaring any sale to be null and void cannot be pressed into service by this Court.

5. On the other hand, Sri.Parameswaran Nair, the

learned counsel for the respondents submitted that the notice under Section 6 of June, 1978 and for forfeiture, of 31.3.1997 would reveal that LRs of the erstwhile owners of the property remained unsuccessful in overcoming the rigours of the 1976 Act. Once those proceedings have already been upheld, the proxy litigation at the behest of the subsequent purchaser would not be maintainable, at the best they are entitled to an independent relief of damages against the erstwhile owner in accordance with law. The Act as per the judgment of the Supreme Court would have a retrospective effect in view of the definition of Section 3 (1) (C) of the 1976 Act and urged this court for dismissal of the writ petitions.

7. Section 3(1) (C), 6, 7 and 11 of 1976 Act reads as follows: Section 3(1) (C): 3. Definitions.- (1) In this Act, unless the context otherwise requires, -

(a) xxxxxxxxxxxxx

(b) xxxxxxxxxxxxxxx

(c) "illegally acquired property", in relation to any person to whom this Act applies, means,

(i) any property acquired by such person, whether before or

after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets derived or obtained from or attributable to any activity prohibited by or under any law for the time being in force relating to any matter in respect of which Parliament has power to make laws; or

(ii) any property acquired by such person, whether before

or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets in respect of which any such law has been contravened; or

(iii) any property acquired by such person, whether before or after the commencement of this Act, wholly or partly out of or by means of any income, earnings or assets the source

of which cannot be proved and which cannot be shown to be attributable to any act or thing done in respect of any matter in relation to which Parliament has no power to make laws; or

(iv) any property acquired by such person, whether before

or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property referred to in sub-clauses (i) to (iii) or the income or earnings from such property; and includes-

(A) any property held by such person which would have

> been, in relation to any previous holder thereof, illegally acquired property under this clause if such previous holder had not ceased to hold it, unless such person or any other person who held the property at any time after such previous holder or, where there are two or more such previous holders, the last of such previous holders is or was a transferee in good faith for adequate consideration;

(B) any property acquired by such person, whether before

or after the commencement of this Act, for a consideration, or by any means, wholly or partly traceable to any property falling under item (A), or the income or earnings therefrom;

(d) prescribed" means prescribed by rules made under this Act;

(e) property includes any interest in property, movable or immovable;

(f) trust" includes any other legal obligation. Section 6:

> 6. Notice of forfeiture.-(1) If, having regard to the value of the properties held by any person to whom this Act applies, either by himself or through any other person on his behalf, his known sources of income, earnings or

assets, any other information or material available to it as a result of action taken under section 18 or otherwise, the competent authority has reason to believe (the reasons for such belief to be recorded in writing) that all or any of such properties are illegally acquired properties, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days, to indicate the sources of his income, earnings or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be illegally acquired properties and forfeited to the Central Government under this Act.

(2) 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. Section 7 :

7. Forfeiture of property in certain cases.-(1) The competent authority may, after considering the explanation, if any, to the show cause notice issued under section 6, and the materials available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are illegally acquired properties.

(2) Where the competent authority is satisfied that some of

the properties referred to in the show cause notice are illegally acquired properties but is not able to identify specifically such properties, then, it shall be lawful for the competent authority to specify the properties which, to the best of its judgment, are illegally acquired properties and record a finding accordingly under sub-section (1).

(3) Where the competent authority records a finding under

this section to the effect that any property is illegally acquired property, it shall declare that such property shall, subject to the provisions of this Act, stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this Act, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government as the transferee of such shares. Section 11:

> 11. Certain transfers to be null and void.-Where after the issue of a notice under section 6 or under section 10, any property referred to in the said notice is transferred by any mode whatsoever such transfer shall, for the purposes of the proceedings under this Act, be ignored and if such property is subsequently forfeited to the Central Government under section 7, then, the transfer of such property shall be deemed to be null and void.

8. Perusal of the aforementioned provisions reveals that even if the Act had come in to place in 1976, it would have a retrospective effect in respect of the properties acquired before the commencement of the Act.

9. Concededly in the present case, the notice of the

forfeiture under Section 6 was issued on 19/20.06.1978. The language of the aforementioned Section, read with Section 11 leaves no manner of doubt that if the notice under Section 6 is issued, any exchange of the property subsequent thereto in the absence of order of the forfeiture would be null and void. Petitioners at relevant point of time, that is 1978, when the notice under Section 6 was issued, were not in the picture. In other words, they had not acquired any right over the property

held or owned by the erstwhile owner.

10. The LRs of the erstwhile owners had also been

unsuccessful before the Appellate Tribunal and as well as the High Court of New Delhi, against the order of the forfeiture. In this view of the matter, the petitioners would not have any grievance challenging the communication dated 09.08.2011 of the Government of India, Ministry of Finance informing them of taking over of the forfeited properties being escheated or in the ownership of the Government.

11. Petitioners cannot claim any compliance of the

principles of natural justice, for, the order of forfeiture was passed in 1997 and they did not come forward before the Competent Authority dealing with the forfeiture nor their particulars were disclosed by the erstwhile owner. Once the provisions under Section 11 envisage the declaration of the property to be sold after issuance of the notice becomes null and void, there cannot be any substance in the argument of affording any opportunity of being heard. In other words, no person can claim ignorance of law, in view of the provisions of Section 78 of the Indian Evidence Act, 1872. Writ petitions are devoid of merit, accordingly dismissed. However, this order will not take away the valuable rights of the petitioners to take the remedy of damages against the erstwhile owner in accordance with law. Sd/- AMIT RAWAL JUDGE mtk APPENDIX OF WP(C) 34751/2011 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF SALE DEED NO.3547/1983 OF SUB REGISTRAR OFFICE, VARKALA DATED 20.08.1983 EXHIBIT P2 TRUE COPY OF SALE DEED NO.510/1983 OF SUB REGISTRAR OFFICE, VARKALA DATED 01.02.1983. EXHIBIT P3 TRUE COPY OF SETTLEMENT DEED NO.2726/1996 OF SUB REGISTRAR OFFICE, VARKALA DATED 17.07.1996 EXHIBIT P4 TRUE COPY OF SETTLEMENT DEED NO.2727/1996 OF SUB REGISTRAR OFFICE, VARKALA DATED 17.07.1996 EXHIBIT P5 TRUE COPY OF SALE DEED NO.704/1971 OF SUB REGISTRAR OFFICE, VARKALA DATED 01.03.1971 EXHIBIT P6 TRUE COPY OF SALE DEED NO.5563/1951 OF SUB REGISTRAR OFFICE, VARKALA DATED 05.11.1951. EXHIBIT P7 TRUE COPY OF SALE DEED NO.5133/1963 OF SUB REGISTRAR OFFICE, VARKALA DATED 06.09.1963. EXHIBIT P8 TRUE COPY

OF SALE DEED NO.2867/1967 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P9 TRUE COPY OF SALE DEED NO. 4494/1966 OF SUB REGISTRAR OFFICE, VARKALA DATED 03.10.1963. EXHIBIT P10 TRUE COPY OF THE TAX RECIPT NO.91 DATED 09.01.1996 EXHIBIT P11 TRUE COPY OF THE TAX RECIPT NO.64 DATED 16.07.1996 EXHIBIT P12 TRUE COPY OF THE TAX RECIPT NO.46 DATED 22.10.1996 EXHIBIT p13 TRUE COPY OF THE TAX RECIPT NO.0384342 DATED 03.03.2010 EXHIBIT P14 TRUE COPY OF THE LETTER NO.OCA/MDS.1520/78 DATED 09.08.2011 19/02/2004 APPENDIX OF WP(C) 34985/2011 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF SALE DEED NO.5080/1992 OF SUB REGISTRAR OFFICE, VARKALA DATED 23.12.1992 EXHIBIT P2 TRUE COPY OF SALE DEED NO.5460/1992 OF SUB REGISTRAR OFFICE, VARKALA DATED 23.12.1992 EXHIBIT P3 TRUE COPY OF SALE DEED NO.5464/1992 OF SUB REGISTRAR OFFICE, VARKALA DATED 23.12.1992 EXHIBIT P4 TRUE COPY OF WILL NO.32/1985 OF SUB REGISTRAR OFFICE, VARKALA DATED 27.03.1985 EXHIBIT P5 TRUE COPY OF THE TAX RECEIPT NO.12 DATED EXHIBIT P6 TRUE COPY OF SALE DEED NO.1581/1964 OF SUB REGISTRAR OFFICE, VARKALA DATED 01.04.1964 EXHIBIT P7 TRUE COPY OF SALE DEED NO.3581/1115 ME OF SUB REGISTRAR OFFICE, VARKALA EXHIBIT P8 TRUE COPY OF THE LETTER NO.OCA/MDS.1520/78 DATED 09.08.2011. APPENDIX OF WP(C) 337/2012 PETITIONER EXHIBITS EXHIBIT P1 TRUE COPY OF SALE DEED NO.626/1984 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P2 TRUE COPY OF SALE DEED NO.710/1984 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P3 TRUE COPY OF THE TAX RECEIPT NO.0106361 DATED 11/11/11. EXHIBIT P4 TRUE COPY OF THE TAX RECEIPT NO.3 DATED EXHIBIT P5 TRUE COPY OF THE TAX RECEIPT NO.12 DATED EXHIBIT P6 TRUE COPY OF SALE DEED NO.2489/1967 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P7 TRUE COPY OF SALE DEED NO.2511/1967 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P8 TRUE COPY OF SALE DEED NO.2867/1967 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P9 TRUE COPY OF SALE DEED NO. 4288/1970 OF SUB REGISTRAR OFFICE, VARKALA DATED EXHIBIT P10 TRUE COPY OF THE LETTER NO.OCA/MDS/1520/78 DATED 09/08/2011. EXHIBIT P11 TRUE

COPY OF THE APPLICATION UNDER RIGHT TO INFORMATION ACT DATED 16/01/2012. EXHIBIT P12 TRUE COPY OF THE LETTER F.NO.OCA/MDS/RTI.2011 DATED 13/02/2012. RESPONDENT EXHIBITS EXHIBIT R1(a) TRUE COPY OF LETTER DATED 19-20/06/1978 ISSUED TO SHRI O. RAGHAVAN. EXHIBIT R1(b) TRUE COPY OF NOTICE DATED 31.03.1997 AUTHORITY. EXHIBIT R1(c) TRUE COPY OF THE ORDER DATED 20/05/1998 ISSUED BY ATFP, NEW DELHI. EXHIBIT R1 (d) TRUE COPY OF ORDER DATED 15/07/1998 ISSUED TO THE 2ND RESPONDENT. EXHIBIT R1(e) TRUE COPY OF ORDER DATED 09/07/2002 IN WPC NO.714/1998 OF THE HONOURABLE HIGH COURT OF DELHI. EXHIBIT R1 (f) TRUE COPY OF LETTER DATED 09/02/2004 ISSUED BY THE 2ND RESPONDENT. EXHIBIT R1 (g) TRUE COPY OF LETTER DATED 09/02/2004 ISSUED BY THE COMPETENT AUTHORITY