**Smt. Suganthip Vs. the Competent Authority and Administrator**

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**SooperKanoon Citation** : sooperkanoon.com/380607

**Court** : Karnataka

**Decided On :** Feb-03-2005

**Reported in** : 2005CriLJ2996; 2005(102)ECC493; 2005(6)KarLJ154

**Judge** : K.L. Manjunath, J.

**Acts** : Narcotic Drugs and Psychotropic Substances Act, 1985 - Sections 68F, 68I, 68K and 68U(2)

**Appeal No.** : W.P. No. 46447 of 2002

**Appellant** : Smt. Suganthip

**Respondent** : The Competent Authority and Administrator

**Advocate for Def.** : N. Devadass, Sr. Central Govt. SC

**Advocate for Pet/Ap.** : B.V. Acharya, Sr. Adv. and ;C.H. Jadhav, Adv.

**Judgement** :
ORDER

**K.L. Manjunath, J.**

1. The present petition is filed challenging Annexure-D dt. 10-1-2000 passed by the respondent and confirmed by the Appellate Tribunal for Forfeited Property, New Delhi, in case No. FPA No. ND3/ BOM/2000/9379 as per Annexure-E dated

14-12-2001.

2. According to the petitioner, she is a graduate doing real estate business in Bangalore. She was doing the said business even prior to her marriage. The petitioner married one Pakeerathan alias Ravi in the year 1990 and who died on 3-2-1997.

3. By order of the Government of India dt. 30-9-1997 one Manivannan Mahadevan alias Ruben was ordered to be detained under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'Act') as he was found in possession of 23 Kgs. of heroin on 24-4-1997. On interrogation, Manivannan, revealed that the husband of the Petitioner Ravi as one of his associates and that Ravi was looking after the business of drug trafficking. In the circumstances, the properties of the petitioner were seized and a search was also conducted on the house of the petitioner on 16-7-1997. The petitioners husband Ravi died on 3-2-1997. A notice was issued to Ruben under Section 68F of the Act based on the report of the Investigating Officer, a copy of the same was marked to the petitioner. After receipt of the notice, she sent a reply contending that her husband died prior to the seizure of the heroin from Ruben and the said Ruben in order to escape from the clutches of law has falsely implicated her husband's name and she further contended that the properties were acquired out of her business income as she was doing real estate business even prior to her marriage. She also furnished income tax returns and the agreements executed by the purchasers who have agreed to purchase the flats in respect of one of the seized properties and requested the authorities to drop the proceedings against her.

4. Thereafter, as per Annexure-D dt. 11-1-2000, the Competent Authority declared all the properties of the petitioner as illegally acquired out of the earnings and assets derived or obtained from the activities attributable to illicit traffic in narcotic drugs and the properties were forfeited free from all encumbrances under Section 68-F of the NDPS Act and she was also called upon to surrender possession thereof to the investigating officer attached to the Competent Authority within a period of thirty days from the date of receipt of the order and further ordered that if

the petitioner fails to deliver possession of the properties, action would be taken as per the provisions of Section 68U(2) of the said Act.

5. The petitioner being aggrieved by the said order filed an appeal before the Appellate tribunal for Forfeited Property, New Delhi. The Appellate Tribunal after hearing the parties has dismissed the appeal by its order dt. 4-12-2001. Challenging these two orders, the present petition is filed by the petitioner.

6. Though other properties of the petitioner are also forfeited, in this petition the petitioner has confined only in respect of one property bearing No. 461, 'Priya Manor', S. R. Layout, Murgesh Palya, Bangalore 17 valued at Rs. 1.3 crores approximately consisting of 16 flats, developed by Priya Builders and Developers. Therefore, though in Annexures D and E in all 11 properties are included, this Court has to decide only in regard to the property No. 3 disclosed in para 4 of the order of the Competent Authority as per Annexure D.

7. I have heard the learned counsel for the parties. Sri B.V. Acharya, learned Senior counsel appearing for the petitioner, contends that the Competent Authority as well as the Appellate Tribunal have not considered the case pleaded by the petitioner properly. According to him, the petitioner was doing real estate business even prior to her marriage and she continued the same after marriage also. The petitioner had purchased a property at Madras during the year 1993-94 for a sum of Rs. 5,88,390/- and she sold the same on 10-2-1994 for a sum of Rs. 7,05,000/-. Thereafter, the property in question was purchased under four different sale deeds dt. 6-7-1994, for a total sale consideration of Rs. 5,74,000/-. According to him, the site in question was purchased out of the sale consideration received by her from the sale of Madras property and that the petitioner had paid a short term capital gain of Rs. 1,01,615/-. The petitioner with an intention to develop the property had entered into an agreement with several intending purchasers of the flats and had received advances through cheques. It is the case of the petitioner that she constructed the flats by investing the advance consideration from different, purchasers and utilising the amount borrowed as loan from private sources and that there was no occasion for her to utilise the money of her husband. It is her case that either her husband or she were not the associates of Ruben and

therefore, the property acquired by the petitioner cannot be treated as a property acquired out of the sale proceeds of narcotic drugs. Sri Acharya further submits that even if the site on which Priya Manor has been constructed was acquired out of the drug trafficking, the building was constructed out of the advance amount given by the purchasers of the flats and also out of the loan borrowed from different persons as shown in the books of accounts and income tax returns. According to him, the Competent Authority as well as the Appellate tribunal have not considered the joint development agreements and the agreements of sale produced by the petitioner before them. Relying upon the agreements of sale entered into between the purchasers and the petitioners, contends that though documents were produced before the authority and the advance amount were received through cheques, the Competent Authority without issuing notices to the intending purchasers has wrongly held that the construction was also made out of the income said to have been received from drug trafficking. Therefore, he contends that the order of forfeiture of the building in question has to be set aside.

8. Per contra, the learned Senior Central Government Standing Counsel, contends that the petitioner had no source of income as she was only a housewife. According to him, the records reveal that Ruben and the husband of the petitioner Pakeerathan alias Ravi were associates in the business of sale of drugs and that out of the said income, investment was made by her husband in the name of the petitioner. Relying upon the income tax returns and other documents produced by the petitioner, he contends that the petitioner has not explained her source of income in order to acquire the Madras property. It is his case that the Madras property was acquired out of the sale of drugs by her husband Pakeerathan. He further contends that the building 'Priya Manor' has also been constructed out of the income from the drug trafficking business and the petitioner has failed to prove that the building was constructed out of the advances received from the agreement holders or by borrowing loan from others as stated in her income tax returns and other books of accounts. He further contends that the burden of proof was on the petitioner to show that the construction was made by the petitioner out of her separate income and that the investment was not out of the ill-gotten money from the sale of drugs. Therefore, he requests this Court to dismiss the writ petition and confirm the order passed by the Competent Authority and the

Appellate authority.

9. Having heard the counsel for the parties, the following points are to be considered by this Court in this writ petition:--

(1) Whether the petitioner proves that she acquired the site, on which Priya Manor building has been constructed, out of self acquired fund without utilising the income derived out of the sale of drugs?

(2) Whether the building has been constructed by the petitioner by utilising the advances received from the purchaser's of the flats and out of the loan contracted by her from the private sources?

10. As rightly submitted by the learned counsel appearing for the respondents before the Competent Authority or before the Appellate Tribunal or even before this Court, the petitioner has not placed any document to show that she was doing real estate business and that she acquired the Madras property out of her income and that no investment was made by her husband out of the income from the drug trafficking. The petitioner has produced income tax returns. From the perusal of the returns; it is not possible for any court to hold that; she was doing real estate business and she had so much income to acquire property at Madras in the year 1993-94. When she acquired the property at Madras, she was not even 22 years old. It is further disclosed that when she married she was studying in B. A. She has married Ravi in the year 1990 and therefore, the contention of the petitioner that even prior to her marriage, she was doing real estate business cannot be believed by the Court. At best, the petitioner can contend that after her marriage she has commenced her business in real estate, but no material is placed before the court that she was actually doing the said business and that she had lucrative income from the said business and that out of the said income she has purchased the site for construction of Priya Manor. Therefore, this Court has to hold that the petitioner has failed to prove that she had acquired the Madras property out of the income derived from the real estate business and that no investment was made by her husband Pakeerathan alias Ravi. No where in the petition the petitioner has averred the nature of business or avocation of her husband. Considering the fact that she was just 22 years old when she acquired the property at Madras and that

she was 20 years old, when she married in the year 1990 and the fact that the business of her husband is not disclosed, this Court has to hold that the property in question was purchased by the petitioner out of the money invested by her husband Pakeerathan alias Ravi. By looking into the order of the Competent Authority it has to be held that there was a nexus between Ruben and the petitioner's husband and that he was a business partner of Ruben. Therefore, it has to be inferred that the investment to purchase the property at Madras was out of the drug trafficking. Accordingly, the said point is held against the petitioner.

11. The next point to be considered by this Court is whether the Competent Authority as well as the Appellate tribunal have considered the plea of the petitioner in regard to the investment made by her to put up Priya Manor building. The Competent Authority in paras 25 and 26 of its order has observed that the petitioner had produced certain documents to show that she had entered into agreement to sell flats to certain persons. Though such documents were placed before the authority, the contention of the petitioner has been rejected only on the ground that she did not offer proper explanation to show that the amount received by her as advances were utilised for construction. The said documents are also placed before this Court by the purchasers of some of the flats who are the petitioners in the connected writ petitions. I have also perused the said documents. These documents are the agreements entered into by the purchasers with the petitioner Smt. P. Suganthi in the year 1995. When the agreements were entered into between the parties it was only a site and the petitioner had obtained licence and plan to construct 16 flats. Advances were paid by the agreement holders through cheques. These documents are not disputed. Even the authorities have not issued any notice to the purchasers though such documents were placed before them. Some of the purchasers have also filed affidavits before the Competent Authority. These affidavits have not been considered by the Competent Authority. Though the Appellate tribunal has referred to some of these documents, the contention of the petitioner has been rejected by the Appellate Tribunal on the ground that there are some discrepancies. There may be some discrepancies in furnishing the accounts, but what was required to be considered was whether the building was constructed out of the investment made by the agreement holders and loan borrowed by the petitioner from private source or out

of the income from the sale of the drugs. But, there is no definite finding on this aspect. Therefore, this Court is of the opinion that the Appellate tribunal has failed to consider the agreements and other documents produced by the petitioner in regard to the investment made by her to put up 16 flats. Owner of a site and owner of the building constructed thereon may be different. In other words, dual ownership of site and building is well recognised. If the competent authority was of the opinion that site has been acquired by the petitioner out of the income derived from drug trafficking and if 16 flats are constructed out of the investment made by the agreement holders, who have purchased flats and if no income of drug trafficking business is utilised for construction of a building, in such circumstances, entire site and flats cannot be forfeited by the authorities. The authority can forfeit the property which is acquired out of drug trafficking business but not the properties acquired out of separate income. Under the guise of exercising powers under the Act, the authority is not expected to forfeit the apartment constructed by the petitioner by utilising the advances received from various intending purchasers. It was incumbent upon the authority to give finding in regard to the actual amount invested by the petitioner out of drug trafficking business and the amount invested by the intending purchasers. Similarly, if the authorities are of the view that the building has been constructed by the petitioner by utilising the advances made by the intending purchasers and the loan if any borrowed by the petitioner, then the petitioner as well as the purchasers of the plots are entitled to invoke provisions of Section 68-K of the Act. If they are intending to exercise provisions of Section 68-K of the Act, it is the duty of the authority to consider the request of the petitioner or the intending purchasers giving option to them to pay the market value of the property so far as in regard to the investment made by the petitioner out of drug trafficking business. In the instant case, the authority has failed to give its finding on these two questions. Therefore, competent authority is required to adjudicate whether 16 flats constructed on the site by the petitioner was out of the income of drug trafficking or utilising the funds borrowed by the petitioner from private sources as shown in her books of accounts and income tax returns and also from out of the advances received from the agreement holders. Therefore, the order passed by the competent authority as well as the Tribunal are required to be set aside and the matter is required to be remitted back to the competent authority only to give its finding on the above question.

12. In the circumstances, this Court concurs with the views of the competent authority that site on which Priya Manor has been constructed by the petitioner was acquired out of the drug trafficking business. The competent authority shall give an opportunity to the petitioner as well as to all the flat owners who have entered into an agreement with the petitioner to purchase flats and advanced amount to the petitioner to prove that petitioner had not made use of the funds to construct the building from out of the drug trafficking business. If the said point is held in favour of the petitioner, considering the provisions of Section 68-K of the Act, competent authority shall also give an option to exercise their rights by the petitioner and the flat owners as required under Section 68-K of the Act.

13. In the circumstances, writ petition is allowed in part and Annexure-D and E are quashed in part. Matter is remitted to the responded only for a limited purpose, as observe above.